

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

118

RSA No.9729 of 2018 (O&M)

Date of decision: 01.04.2019

Mukesh Kumar

..... Appellant

Versus

Pooja and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ram Bilas Gupta, Advocate
for the appellant.

ANIL KSHETARPAL, J.(ORAL)

CM-18852-C-2018

Application is allowed and the delay is condoned.

Main Case

Plaintiff-appellant is in the regular second appeal against the judgment passed by the First Appellate Court exercising discretion and ordering refund of the earnest money along with interest @ 9% per annum from the date of filing of the suit till realization rather than a decree for possession by way of specific performance of the agreement to sell.

It will be noted that First Appellate Court has also affirmed the finding of the Court that there was an agreement to sell on payment of earnest money. However, learned First Appellate Court has found that the defendants became owner of the property on 31.07.2014 on payment of sale consideration amounting to Rs.4,48,000/- and on the same day, plaintiff propound an agreement to sell agreeing to sell same property. The

defendants have pleaded that it was in fact a loan transaction as loan of Rs.3,22,000/- was borrowed on 31.07.2014 and the signatures of the defendants were obtained on blank papers. Learned First Appellate Court has found two reasons to deny the relief of specific performance.

1. The case set up by the defendants appears to be more probable as if the defendants were to sell the property, they would have got the sale deed executed and registered directly in the name of the plaintiff. The Court has found that it is highly improbable that on the day, the defendants purchase the property, they also agree to sell the same. Learned counsel appearing for the appellant has submitted that the defendants are making profit of Rs.52,000/- as the property was purchased for Rs.4,48,000/- whereas agreement to sell is Rs.5,00,000/-.

This Court has considered the submission but find no substance therein. The reasoning given by the First Appellate Court that if the defendants wanted to sell the property, they would have straight way got the sale deed registered in favour of the plaintiff.

2. The First Appellate Court has also found that original sale deed is in possession of the plaintiff which is unusual. The Court has further found that this happens only when there is a loan transaction. Otherwise, the intended seller would not hand over the original sale deed to the intended buyer merely on part payment of the sale consideration. Learned First Appellate Court has exercised a discretion based upon preponderance of evidence which is not shown to be perverse or misreading of evidence.

Learned counsel for the appellant in the alternative submitted that the defendants themselves have pleaded that they had taken a loan on payment of interest and therefore, the rate of interest awarded is totally

unrealistic. It will be noted that First Appellate Court has awarded interest @ 9% per annum pendente lite as well as future interest from the date of filing of the suit till realization. The rate of interest awarded by the Court is just and reasonable and does not require any interference.

Hence, the appeal is dismissed.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

01.04.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No