

**Sr. No.272
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**RSA-2478 of 2019 (O&M)
Date of Decision: 15.01.2020**

DES RAJ

... Appellant

Versus

JAI PARKASH GOYAL AND ORS.

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Raman Mohinder Sharma, Advocate,
for the appellant.

ARUN MONGA, J.(ORAL)

The defendant (appellant herein) has preferred the Second Appeal before this Court aggrieved by the reversal of findings returned by the first Appellate Court whereby the suit filed by plaintiff has been partly decreed by modifying the trial Court judgment and decree dated 29.11.2013 dismissing the suit in entirety and directing that the plaintiffs were entitled to a decree to recover a sum of Rs.1,50,000/- alongwith interest @ 6% p.a. w.e.f. 31.03.2009 till its actual realization.

2. Factual matrix, as noted by the Courts below is that the plaintiffs entered into an agreement to sell with defendant on 03.10.2008 in respect of the suit property comprising of a house with two rooms, kitchen, store, stairs and terrace along with one shop in front of the house for a total consideration of Rs.26,65,000/-. As per the said agreement to sell, plaintiffs No. 1 to 4 were entitled to divide the sale proceeds amongst themselves in the ratio of 30/100, 30/100, 15/100 and 25/100 respectively. The defendant received an amount of Rs.6,00,000/- from the plaintiffs

as earnest money at the time of execution of the agreement. Thereafter, another sum of Rs.1,50,000/- was paid on 10.12.2008 by the plaintiffs to the defendant as per agreement dated 10.12.2008. In terms of the covenants of the agreement to sell, the sale deed was to be executed on or before 31.03.2009 and the defendant was to be responsible for any defect in the ownership of the suit property.

3. The plaintiffs filed the suit asserting that they later on learnt from the revenue records that the defendant is not the owner of the suit property, had cheated them and thus a total amount of Rs.7,50,000/- from the plaintiffs. A suit for recovery of Rs. 9,00,000/- (7,50,000/- being the earnest money and Rs.1,50,000/- towards loss in bargain and interest) alongwith future interest w.e.f date of filling of the suit till the actual realization thereof was filed against the defendant. The defendant in his written statement admitted that he had indeed entered into an agreement to sell but denied that he was not the owner of the said property. He setup his title on the basis of a registered sale deed No.1834 dated 08.12.1970 registered on 09.12.1970 and pleaded that he had rightly received the earnest money of Rs.6,00,000/- as well as further sum of Rs.1,50,000/- towards the part sale consideration. The defendant further setup his defence on the basis of agreement to sell dated 03.10.2008 wherein the factum of his ownership by virtue of the registered sale deed has been duly recited. The defendant claims that the plaintiffs with an intent to find a buyer of the property had entered into with him an agreement to

sell/purchase. However, having failed to find a buyer later on, the plaintiffs concocted the false plea of the defendant not being the owner of the property. The plaintiffs were, in fact, not ready and willing for specific performance of the agreement to sell and were not entitled to any recovery having themselves not performed their part of the agreement. Based on the pleadings, following issues were framed by the trial Court:

1. Whether the defendant entered into an agreement with the plaintiff for a consideration of Rs.26,65,000/- and paid Rs.6,00,000/- as earnest money on 03.10.2008 and also paid Rs.1,50,000/- on 10.12.2008 to the defendant? OPP\
 2. Whether the plaintiff is entitled to recovery of Rs.9,00,000/- alongwith interest as prayed for? OPP
 3. Whether the suit of the plaintiff is not maintainable? OPD
 4. Whether the plaintiffs have violated the terms and conditions of the agreement to sell? OPD
 5. Relief.
4. The parties to the lis adduced their respective evidence both oral and documentary in support of their pleadings and in order to discharge their respective onus as per the issues *ibid*. Except issue no.1, the other issues were decided by the trial Court in favour of the defendants and, resultantly, the suit of the plaintiffs was dismissed. The learned First Appellate Court framed the following questions for adjudication in first appeal:-

- A. Whether the plaintiffs have proved that defendant was having imperfect title with regard to the suit property?
 - B. Whether the plaintiffs have proved the concealment of the material information of circular Ex-P-8 with regard to the suit property, if yes, its effect?
 - C. Whether plaintiff is entitled to recover the amount of Rs.7,50,000/- with interest from the defendant?
5. Returning the findings on question No.A, the learned Appellate Court held that the plaintiff was indeed owner of the property as reflected from the sale deed. It rendered the finding that the sanctioning of mutation is irrelevant once the sale deed

has been duly proved. As regards, the possession of the suit property, the same was also found to be with the defendant. Furthermore, the learned Appellate Court held that it was the responsibility of the plaintiff to beware of the relevant by-laws, notifications/circular of the Local Authorities/State Government/Central Government and any non-disclosure thereof on the part of the defendant was not a valid ground to avoid the contract. In the premise, it held that there was no concealment on the part of the defendant in as much as notification dated 05.02.1996 was issued 13 years prior to the entering into the agreement to sell. Therefore, the plea set up by the plaintiffs regarding ban on the construction upto 10 meters from the edge of the road by Punjab Town and Country Planning Department way back in year 1995 was not tenable. It held that the said circular did not in any manner adversely effect the ownership rights of the defendant.

6. In the aforesaid background of the findings, the learned trial Court found that the defendant has admitted that the amount of Rs.1,50,000/- paid by the plaintiffs on 10.12.2008 was as a part of the sale consideration and not earnest money. The learned First Appellate Court, therefore, held that the defendant was not entitled to retain any amount beyond the earnest amount in terms of the forfeiture clause. Since the forfeiture clause in the agreement to sell envisages that in the event of non-performance of agreement on the part of the plaintiffs, defendant is entitled to forfeiture of only the earnest amount, it partly decreed the suit in

favour of the plaintiffs by holding that defendant was not entitled to retain part sale consideration of Rs.1,50,000/-. Hence, the present Regular Second Appeal by the plaintiffs seeking refund of the balance of the earnest money.

7. Having heard the learned rival contentions of the learned counsel for the parties and after perusal of the judgment of the courts below, this court is in agreement with the findings returned by the first Appellate Court.

8. Admittedly, the amount of Rs.1,50,000/- paid to the defendant appellant on 10.12.2008 was towards price of the house and was not the earnest money. The learned First appellate Court rightly held that the clause in the agreement for forfeiture of earnest money was not applicable to the said payment.

9. Having perused the judgments passed by the Courts below which are in assailed herein that viz-a-vis ground taken in the second appeal, this court is of the view that no fresh grounds worthy of seeking interference in the Appellate jurisdiction of this Court are made out.

10. There seems to be no perversity or illegality in the concurrent findings of facts recorded by both the Courts below. They are in consonance with the record.

11. Furthermore, neither any question of law much less substantial question of law, which is sine qua non for entering second appeal before this Court is involved in present appeal so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Code of Civil Procedure.

12. In view of my above discussion and the reasons recorded therein, the appeal is dismissed being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by the Courts below are upheld.
13. The appeal stands dismissed accordingly.
14. No order as to costs.

15.01.2020
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(ARUN MONGA)
JUDGE

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