

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-2588-2019 (O&M)
Date of decision : 03.02.2020

Ram Pal

...Appellant

Versus

Dhanna Ram and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Saurabh Garg, Advocate for
Mr. Anurag Gupta, Advocate for the appellant.

Mr. B.S. Dhillon, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.1-appellant is in the Regular Second Appeal against the findings of fact arrived at by the First Appellate Court ordering refund of ₹2,00,000/-, an amount representing the earnest money alongwith interest at the rate of 6% per annum, while declining decree for possession by way of specific performance of the agreement to sell.

No doubt, both the Courts have found that agreement to sell was only as a security against the loan advanced, however, learned trial Court after recording such findings chose to dismiss the suit whereas the First Appellate Court has held that since under the agreement to sell, ₹2,00,000/- is proved to have been paid, therefore, the plaintiff-respondent is entitled for alternative decree for recovery of the amount.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant submitted that he had borrowed a sum of ₹1,00,000/- in cash whereas he had borrowed timber worth ₹50,000/- and, therefore, the Court erred in granting decree for recovery of ₹2,00,000/-

This Court has considered the submissions. The agreement to sell evidencing payment of ₹2,00,000/- has been proved by the plaintiff. The defendant has signed on the aforesaid agreement to sell.

In view thereof, the plaintiff in absence of any substantive evidence, cannot be permitted to contend that the loan was ₹1,50,000/- and not ₹2,00,000/-.

In view thereof, there is no ground to interfere.

Accordingly, the present Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

03.02.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No