

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2386 of 2018 (O&M)

Date of Decision: 28.01.2020

Maina Devi

... Appellant(s)

Versus

Madan Lal

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Akshay Kumar Jindal, Advocate
for the appellant.

Anil Kshetarpal, J.

The defendant/appellant has filed the present appeal against the judgment & decree passed by the learned first Appellate Court ordering refund of earnest money along with interest at the rate of 7.5% per annum from the date of filing of the suit till its realization.

The plaintiff/respondent has filed a suit for possession by way of specific performance of the agreement to sell dated 23.08.2010. It is undisputed that the defendant has received ₹ 9,00,000/- as earnest money. The learned trial Court, taking note of the fact that the plaintiff did not appear before the Court in evidence, recorded a finding that readiness and willingness of the plaintiff is also not proved. Thus, the trial Court dismissed the suit.

The learned first Appellate Court, on re-appreciation of evidence, has partially modified the judgment and decree and ordered refund of earnest money along with interest as noticed above.

plaintiff was not having sufficient means to pay the balance sale consideration; He further submitted that the plaintiff, when appeared in evidence, did not say that he was present on 31.01.2012. He further submitted that the plaintiff is a property dealer.

This Court has considered the submissions, however, find no substance therein. It has come in evidence that the plaintiff lost his vocal cords and, therefore, was unable to speak. Hence, son of the plaintiff has appeared as PW.3. The son of the plaintiff was not a stranger. He has stated that he was aware of the facts of the case. Still further, on 06.07.2011, the date agreed for execution and registration of the sale deed, the plaintiff went to the office of Registrar for execution of the sale deed and proved his presence on an affidavit Ex.P1 attested before the Sub Registrar. Further, it has come in evidence that the wife of the plaintiff had sold immovable property vide sale deed dated 23.07.2010 for a sum of ₹ 21,00,000/-, whereas the balance sale consideration as per agreement to sell payable by the plaintiff was only ₹6,40,500/-.

Still further, when the plaintiff appeared before the Sub Registrar for getting the sale deed registered, he has stated, in his affidavit, that he is ready and willing to perform his part of the contract and has brought the balance sale consideration. The argument of learned counsel for the appellant is that on 31.01.2012, the plaintiff, in his affidavit, has not stated that he has brought the balance sale consideration, is required to be examined in the context of the case. In the present case, the plaintiff has visited the office of the Sub Registrar on 06.07.2011. Thereafter, he sent a notice to the defendant on 04.01.2012 calling upon the defendant to come

forward for execution and registration of the sale deed on 30.01.2012. On that day also, the plaintiff again went to the office of the Sub Registrar. In these circumstances, there is no substance in this argument of the learned counsel for the appellant.

Next submission of learned counsel for the appellant is also without substance merely because a person is a property broker would not dis-entitle equal application of law. A property broker is a citizen of the country and the laws are equally applicable to all. Hence, there is no ground to interfere. Dismissed.

All the miscellaneous applications, if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

January 28, 2020
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No