

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-524-2018(O&M)
Date of decision: 12.03.2020

Shivdayal Singh (deceased) through his LRs
.....Appellants

Versus

Narinder Singh and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Naresh Jain, Advocate for the appellants

ANIL KSHETARPAL, J.

The defendant-appellant through his LRs has filed the present Regular Second Appeal against the concurrent finding of facts arrived at by the Courts below, while passing a decree for refund of the earnest money alongwith appropriate rate of interest but refusing to grant decree for possession by way of specific performance of the agreement to sell. Earnest money of Rs. 35 lacs was paid in following manner:-

Rs.11 lacs	cash
Rs. 14 lacs	by way of Banker's cheque
Rs.10 lacs	through demand draft

It has also come in evidence that Shiv Dayal Singh had entered into various agreements to sell with regard to the suit property and received earnest money under each agreement to sell. Learned Courts below on appreciation of evidence have granted alternative relief i.e refund of the earnest money. The defendant has contested the suit and pleaded that the agreement to sell is a fictitious document and in fact

parties wanted to start business of property dealing and for that purpose the present the agreement to sell was executed which was subsequently cancelled. It was further pleaded that the defendant was busy in his election campaign and his signatures were obtained fraudulently.

On appreciation of evidence, both the Courts have found that the defendant has failed to substantiate assertions made in the written statement.

Learned counsel appearing for the appellants submitted that the present suit is barred under Order 2 Rule 2 CPC as the plaintiff had previously filed a suit for grant of injunction on 28.5.2008. As per the agreement to sell, target date for execution and registration of the sale deed was 5.11.2008. Thus, cause of action to file suit for possession by way of specific performance of the agreement to sell has not arisen on 28.5.2008 when the suit for injunction was filed. Learned counsel for the appellant relies upon the judgment passed by the Hon'ble Supreme court in **M/s Virgo Industries (Eng.) P. Ltd. vs. M/s Venturetech Solutions P. Ltd.** 2012 (4) RCR (Civil) 372.

This Court has read the aforesaid judgment carefully. In that case the plaintiff was having notice of refusal by the defendant alongwith refund of the earnest money before filing the suit for injunction. In those facts, the Hon'ble Supreme Court held that subsequent suit filed for specific performance of the agreement to sell would be barred. In the present case, the defendant has failed to prove that the plaintiff had any notice alongwith cheque for refund of the earnest money before institution of the suit by the plaintiff for relief of permanent injunction.

Hence, the aforesaid judgment would not be applicable to the facts of the

present case.

In view thereof, there is no ground to interfere.

Hence, dismissed.

12.03.2020	(ANIL KSHETARPAL)
rekha	JUDGE
Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No