

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

RSA No.863 of 2021 (O&M)
DATE OF DECISION : 01.10.2021

The Estate Officer, HUDA, Sirsa, District Sirsa ...Appellant

Versus

Surender Kumar Garg ...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Rajesh K. Sheoran, Advocate,
for the appellant.

(Presence marked through video conferencing).

ARUN MONGA, J. (ORAL)

For convenience, parties herein are addressed as per the recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, the defendant is in second appeal before this Court assailing the trial Court judgment and decree dated 21.09.2019, as upheld by learned First Appellate Court vide its judgment and decree dated 12.03.2021.

3. Briefly stated, facts as noticed by Courts below are that plaintiff applied for the free hold residential plot bearing 08 marlas in Mandi Township, Kalanwali, Tehsil and District Sirsa, in the reserved category. Plaintiff deposited Rs.1,24,900/- vide demand draft No.226428 dated 20.05.2014 with the defendant and Plot No.187 was allotted to him. Later on he surrendered the said plot vide application dated 14.07.2016 but till date defendant has not returned/refunded his amount. Legal notice dated

17.03.2017 was also sent but to no avail. Suit was filed for mandatory injunction against the appellant for refund of plaintiff's money with interest.

4. Upon notice, defendant appeared and filed written statement taking preliminary objections regarding maintainability; concealment of true facts; mis-joinder of parties; no cause of action etc. On merits, it is admitted that the plaintiff surrendered the plot and therefore, he is entitled to refund of Rs.1,24,900/-. It is further contended that said amount has already been refunded to the plaintiff vide Cheque No.000386 dated 15.05.2017.

5. Replication to the written statement was filed reiterating the facts as contained in the plaint.

6. Based on the rival pleadings, following issues were framed:

1. Whether the plaintiff is entitled for a decree of mandatory injunction, as prayed for? OPP

2. Whether suit of the plaintiff is not maintainable in the present form? OPD

3. Whether suit is bad for non-joinder and mis-joinder of necessary parties? OPD

4. Whether the suit is bad for want of mandatory notice under Section 80 CPC ? OPD

5. Whether the plaintiff has no cause of action to file the present suit ? OPD

6. Whether the suit of plaintiff is liable to be rejected on account of insufficient court fee stamp ? OPD

7. Whether the plaintiff is stopped by his own act and conduct from filing the present suit ?

8. Relief.

7. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

8. On appraisal of evidence vis-à-vis pleadings, trial Court decided issues No.1, 2 and 5 in favour of the plaintiff and against the defendant.

9. Feeling aggrieved against the said judgment and decree dated 21.09.2019, the defendant preferred first appeal which was dismissed vide judgment and decree dated 12.03.2021. Hence, the instant Regular Second Appeal before this court.

10. I have heard learned counsel and perused the judgments of both the Courts below. To my mind, judgments under challenge have been rendered after due and correct appreciation of evidence adduced by the respective parties. Relevant of the First Appellate Court judgment, and cogent reasons therein with which I am in agreement with, is as below :

“ There is no dispute between the parties with respect to date of surrender of plot on 22.07.2016 and the date of refund of earnest money of Rs.1,24,900/- on 15.05.2017. The fact that appellant-defendant charges interest from the allottees in case of any delay in payment, then, certainly appellant-defendant cannot deny the said interest while repaying the earnest money to the allottees in case of surrender, being based on principle of justice, equity and good conscience, even if there is no specific provision in this regard. Learned Civil Judge has given the interest to respondent-plaintiff only for the limited period i.e from the date of moving application for surrender (i.e 22.07.2016) to the date of refund of the earnest money (i.e 15.05.2017). The said interest given by learned Civil Judge is

justified being given for the limited period and appellant-defendant cannot deny the same on the ground that there is no specific provision to refund earnest money with interest.”

11. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. No fresh ground worthy of interference in the appellate jurisdiction of this Court is made out.

12. Furthermore, no question of law, much less substantial one, a sine qua non for entertaining regular second appeal, is involved herein, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

13. In view of my discussion above and the reasons aforesaid, this appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

14. Pending application/s, if any, shall also stand disposed of.

15. No order as to costs.

OCTOBER 01, 2021
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No