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

RSA-886-2020 (O&M)

Date of Decision:05.08.2022

Harnek Singh

.. Appellant

Vs.

Jasbir Singh Khurana

..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Vishal Deep Goyal, Advocate for the appellant.

...

Manoj Bajaj, J. (Oral)

Appellant (defendant) is aggrieved against the judgment and decree dated 05.10.2019 passed by Addl. District Judge, Ludhiana in Civil Appeal No.335 dated 04.01.2017, whereby the judgment and decree dated 06.08.2015 passed by Civil Judge (Jr. Divn.), Ludhiana in Civil Suit No.113 dated 17.05.2007, partly decreeing the suit of plaintiff (respondent), was upheld.

The facts in brief are that plaintiff Jasbir Singh Khurana filed a suit for specific performance of contract dated 06.09.2004, whereby the defendant had agreed to sell a plot measuring 1500 sq. yards comprising in khasra Nos.368, 369, khata No.475/491, 476/491, situated at Taraf Burarha, H.B. No.168, Tehsil and District Ludhiana, now known as Kartar Nagar, Near Labour Colony Ludhiana, and pursuant to the agreement to sell, a sum of Rs.35 lacs was paid as earnest money, whereas the remaining amount was to be paid at the time of execution of sale deed. Since the defendant had failed to keep his promise, and on the other hand, plaintiff was throughout ready and willing to perform his part of the contract, he instituted the suit

seeking decree for specific performance, and in the alternative, it was prayed that the earnest money paid by plaintiff to the defendant be refunded to him along with interest.

The suit was contested by the defendant by filing written statement, who had set up a specific defence that the contract relied upon by the plaintiff was later on rescinded and the cancellation deed (Ex.DA/A) was executed between the parties and the earnest money was also returned to plaintiff through a cheque of Rs.12 lacs and balance Rs.23 lacs was paid cash. Further, while denying the other averments contained in the plaint, it was prayed that the suit be dismissed.

Upon considering the pleadings of the parties, the trial Court in all, framed seven issues and thereafter, the parties adduced their respective evidence. The trial Court after considering the pleadings and evidence, partly decreed the suit in favour of plaintiff vide judgment and decree dated on 06.08.2015, thereby refusing specific performance of contract and directed refund of the earnest money.

Dis-satisfied with the judgment and decree dated 06.08.2015, the defendant preferred an appeal before the first appellate Court and the same was dismissed vide judgement and decree dated 05.10.2019 passed by Addl. District Judge, Ludhiana. Through the impugned judgment and decree dated 06.08.2015, the cross-objections bearing No.CA-935-2015 filed by plaintiff were also dismissed.

Learned counsel for the appellant has argued that the entire case of the parties is founded upon documentary material and once the trial Court has accepted the defence of the defendant and has refused to pass a decree for specific performance of contract on 06.09.2004, therefore, it

could not have passed the impugned decree against the appellant directing to refund the amount, which already stood returned to the plaintiff. According to him, the suit property was encroached by third party, therefore, the sale deed could not have been executed and the contract ended in cancellation deed dated 07.12.2004, which is signed by the plaintiff, who has acknowledged the receipt of amount of Rs.35 lac i.e. Rs.12 lacs by cheque and remaining amount by cash. In this regard, he has invited the attention of the Court to bank account statement of plaintiff Ex. DW-6/A and Ex. DW-6/B. He submits that the material documentary evidence is disbelieved by both the Courts, therefore, impugned judgment and decree is not sustainable.

After hearing the learned counsel and considering the arguments, this Court finds that the alleged cancellation deed (Ex.DA/A) is without material particulars of the alleged payments to the plaintiff by defendant and though the amount is mentioned in this, but no date is contained in it. During the course of hearing, it is not disputed by learned counsel that against the cash payment made to the plaintiff, no receipt was executed, and further the details of cheque of Rs.12 lacs are also not contained in the cancellation deed. The argument by learned counsel that the account statement of plaintiff on record shows that the amount paid by the defendant was utilized by him in clearing his loan amount is without any merit, as the deposit by plaintiff would not be an evidence to accept the claim made by the defendant that he had returned the earnest money to him. Further, a close analysis of the impugned judgments and decrees passed by both the Courts shows that the findings returned are based upon proper appreciation of evidence and same do not suffer from any perversity.

No other argument was raised.

Resultantly, this Court finds that the appeal does not involve any substantial question of law, therefore, the same fails and is dismissed.

05.08.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No