

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

(117)**RSA No.912 of 2021 (O&M)****Date of Decision: 08.08.2023**

Prahalad Singh and Anr.

.....Appellants

Versus

Sandeep Sanghi and Others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Anoop Kumar Yadav, Advocate, for the appellants.

HARKESH MANUJA, J.(ORAL)

1. By way of present appeal, challenge has been made to the judgments and decrees dated 18.02.2017 and 02.08.2021 passed by the Courts below whereby a suit for possession, recovery and permanent injunction filed at the instance of respondents/plaintiffs has been partly decreed to the extent of refund of Rs.9 lacs without any interest in their favour.

2. Briefly stating, a suit for possession, recovery and permanent injunction came to be filed at the instance of respondents/plaintiffs against appellants/defendants with the averments that an agreement to sell dated 29.05.2009 was entered into between the parties qua the suit property and a sum of Rs.14 lacs was paid as earnest money with 11th December, 2009 being the target date. It was further pleaded that despite respondents/plaintiffs being ready and willing to perform their part of contract, sale deed could not be executed, thus, compelling them to file the suit.

3. On the other hand, the suit was contested by the appellants/defendants while admitting the execution of the agreement to sell dated 29.05.2009, however, it was submitted that as per the terms of the said agreement to sell, in case, respondents/plaintiffs failed to get the sale deed

executed, the earnest money was required to be forfeited.

4. The trial Court vide judgment and decree dated 18.02.2017, though dismissed the suit qua the relief of possession by way of specific performance, however, partly decreed the suit to an extent of recovery of Rs.9 lacs without interest in favour of respondents/plaintiffs.

5. Aggrieved thereof, the respondents/plaintiffs filed first appeal, however, the same was also dismissed by the Court of learned Additional District Judge, Narnaul, vide judgment and decree dated 02.08.2021, upholding the judgment passed by the trial Court.

6. Impugning the aforementioned two judgments and decrees passed by the Court below, learned counsel for the appellants/defendants No.1 and 2 vehemently submits that once the respondents/plaintiffs failed to prove their readiness and willingness to get the sale deed executed in pursuance to the agreement to sell dated 29.05.2009, as per terms of the agreement, no refund could have been ordered in their favour as the earnest money stood forfeited. In support, he relies upon a judgment passed by Hon'ble Supreme Court in case of "**Kamal Kumar Vs. Premlata Joshi and Others 2019(1) RCR (Civil) 576.**" No other argument has been addressed.

7. I have heard learned counsel for the appellants and gone through the paper book. I am unable to find substance in the submission made on behalf of appellants.

8. In the present case, suit was filed by the respondents/plaintiffs on the basis of agreement to sell dated 29.05.2009 which was never disputed by the appellants/defendants, however, a plea of forfeiture of earnest money was raised in terms thereof. A perusal of the agreement dated 29.05.2009 (Ex.P-1) shows that as per its terms, though a sum of Rs.14 lacs was paid as earnest

money to the vendor, however, the right of forfeiture was restricted only qua Rs.5 lakhs out of the same and thus, the Courts below, relying upon the terms of the agreement which bind the parties, granted relief regarding decree for recovery-refund of Rs.9 lakhs in favour of respondents/plaintiffs since they failed to establish their readiness and willingness to perform their part of agreement. Relevant portion from the agreement to sell dated 29.05.2009 is reproduced hereunder for reference:-

.....In case the second party does not get the sale deed executed in time, a sum of Rs.5 lacs out of the money paid shall be forfeited and Rs.9 lacs shall be returned by the first party to the second party.....

9. In the wake of aforementioned portion of the agreement to sell it is evident that the decree for recovery of Rs. 9 lacs has been ordered against the appellants/plaintiffs purely in terms of the agreement in question and the law cited at the bar by the learned counsel for the appellants is not applicable to the facts and circumstances of the present case.
10. In view of the discussion made hereinabove, finding no illegality or perversity in the judgments passed by the Courts below, the present appeal is dismissed.
11. Pending applications, if any, stands disposed of.

(HARKESH MANUJA)
JUDGE

08.08.2023
anil

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No