

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

**RSA-5342 of 2012 (O&M)  
Date of Order: 17.08.2023**

**Sube Singh**

**.Appellant**

**Versus**

**Hawa Singh and another**

**..Respondents**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**Present: Mr. Chanderhas Yadav, Advocate,  
for the appellant.**

**Mr. Daman Batalvi, Advocate and  
Ms. Monika Khatri, Advocate  
for the respondent no.1 and 2.**

**ANIL KSHETARPAL, J**

1. The appellant before this court was the defendant in the plaintiffs' suit for grant of specific performance of the agreement to sell. The trial court did not grant relief of specific performance of the agreement to sell, however, it ordered the refund of the earnest money along with interest. The First Appellate Court has modified the decree and granted the relief of specific performance of the agreement to sell. The defendant has filed the present appeal assailing the correctness of the judgment passed by the First Appellate Court.

2. In order to comprehend the issues that require adjudication the relevant facts, in brief, are required to be noticed:-

3. On 01.08.2006 the plaintiffs filed a suit for specific performance of the agreement to sell dated 29.12.2005, with respect to 12 kanals land for a total sale consideration of Rs.4,87,500/- on receipt of the earnest money of Rs.1,25,000/-. As per the agreement to sell, the sale deed

was to be executed on or before 15.06.2006. The plaintiffs claimed that they attended the office of the Sub-Registrar, however, the defendant did not come forward to perform his part of the contract.

4. While defending the suit, the defendant stated that there was no agreement to sell and in fact on 28.06.2005, the defendant borrowed a sum of Rs.1,20,000/- for a period of six months with interest @ 24% per annum. On 30.12.2005, he paid a sum of Rs.9400/-, however, he failed to pay the remaining amount. The defendant was declared defaulter by Mini Bank, Chhapar and hence, he was unable to repay the amount.

5. As noticed above, the trial court only ordered passing of the decree for refund of the earnest money. It has been noticed that the First Appellate Court has held that Ex.D1, the extract of the register of the scribe is not admissible in evidence and therefore, the plaintiffs are entitled to the specific performance of the agreement to sell.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the requisitioned record.

7. The learned counsel representing the appellant while referring to the depositions of PW1, PW2 and PW3 submits that the execution of the prior agreement to sell on 28.06.2005 on payment of Rs.1,20,000/- as earnest money is admitted by the witnesses including the plaintiff. Hence, the First Appellate Court has erred in observing that Ex.D1 is not admissible in evidence. He submits that the plaintiffs did not disclose about the aforesaid agreement to sell, hence, they were not entitled to the discretionary relief as per the unamended Section 20 of the Specific Relief Act, 1963.

8. On the other hand, the learned counsel representing the

respondent (plaintiff) submits that the defendant failed to prove the re-payment of Rs.94,00/- and the execution of the agreement to sell dated 29.12.2005, is proved, therefore, the decree for specific performance has correctly been passed by the First Appellate Court. He submits that the First Appellate Court has correctly held that Ex.D1 is not proved on the record.

9. From the arguments of the learned counsel representing the parties, it is evident that Ex.D1 is the pivotal document which is required to be examined carefully. Ex.D1 is extract of the register of the scribe, namely, Sh. Satbir Saini. He was examined by the plaintiff in order to prove the agreement to sell dated 29.12.2005. During the cross-examination, he admitted that he scribed the previous agreement to sell between the same parties with respect to the same property on 28.06.2005. This agreement to sell was executed on receipt of Rs.1,20,000/- as the earnest money. The entry in the scribe's register is not only signed by the plaintiff but also by the marginal witness Sh. Satbir Saini, who has been examined as PW2 by the plaintiff. In these circumstances, Ex.D1 was correctly admitted in evidence.

10. The execution of the agreement to sell on 28.06.2005, is even admitted by the plaintiff as he stated that while executing the fresh agreement to sell dated 29.12.2005, the previous agreement to sell was cancelled. Obviously, he is referring to the agreement to sell dated 28.06.2005. Admittedly, the plaintiffs while filing the suit did not disclose about the previous agreement to sell. Moreover, it is evident that the defence put forth by the defendant stands proved. It is the case of the defendant that he borrowed a sum of Rs.1,20,000/- on 28.06.2005 for a period of six months while agreeing to re-pay the amount along with interest @ 24% per annum. However, he only paid the amount of Rs.9400/- which

was adjusted and the fresh agreement to sell was executed reflecting the payment of Rs.1,25,000/-. Thus, it is evident that the transaction between the parties was in fact a loan transaction and the agreement to sell was executed only to secure re-payment of the amount. The trial Court has correctly held that in such circumstance it was not appropriate to pass a decree for specific performance of the agreement to sell.

11. Keeping in view the aforesaid facts and discussion, the decree passed by the First Appellate Court is set aside and the trial court's decree is restored.

12. With these observations, the appeal is allowed.

13. All the pending miscellaneous applications, if any, are also disposed of.

August 17, 2023  
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(ANIL KSHETARPAL)  
JUDGE

Whether speaking/reasoned

Whether reportable

:YES/NO

:YES/NO