

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2376 of 2013 (O&M)

Date of Order:22.03.2024

Subrati

.Appellant

Versus

Smt. Shanti Dvi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Satish Chaudhary, Advocate
for the appellant.

Ms. Malkit Kaur, Advocate
for respondent no.4.

ANIL KSHETARPAL, J

1. This is the plaintiff's regular second appeal against the first appellate court's judgment and decree while granting her alternative relief of refund of Rs.2,50,000/- along with interest @ 6% per annum from the date of alleged execution of the agreement to sell till its realization in a suit filed by him for specific performance of the agreement to sell.

2. On 14.02.2006, the plaintiff filed a suit for specific performance of the agreement to sell dated 02.09.2004. He claimed that on receipt of Rs.1,50,000/- out of total sale consideration of Rs.4,00,000/-, Smt. Shanti Devi (defendant no.1) agreed to sell land measuring 25 kanals and 13 marlas. The sale deed was to be executed on or before 20.03.2005, however, with mutual consent and on payment of additional amount of Rs.1,00,000/-, the date was extended to 20.03.2006, i.e. for a period of one year from 20.03.2005. In the meantime, defendant no.1 executed two sale deeds, one in favour of defendant no.3 on 26.04.2005, whereas second in favour of

defendant no.4, on 18.01.2006.

3. The trial court dismissed the plaintiff's suit, however, the First Appellate Court modified the decree and granted relief of refund of the amount of Rs.2,50,000/- with interest. The correctness of the aforesaid judgment is challenged by the plaintiff in this appeal.

4. The learned counsel representing the appellant submits that the execution of the agreement to sell is proved and the plaintiff has paid amount of Rs.2,50,000/- and he is in possession of the same. He submits that the court has erred in granting alternative relief as the plaintiff was entitled to relief of specific performance.

5. Per contra, the learned counsel representing defendant no.4 has submitted that the discretion exercised by the First Appellate Court requires no interference. She submits that respondent no.4 is a bonafide purchaser for valuable consideration of Rs.4,50,000/- and she is not related to defendant no.1.

6. This court has considered the submissions of the learned counsel representing the parties.

7. It is evident that on the facts of the case, the First Appellate Court has formed an opinion that the appellant is not entitled to relief of specific performance on the following grounds:-

- (1) The court has held that the transaction between plaintiff and defendant no.1 was in fact a loan transaction as claimed by defendant no.1
- (2) Respondent nos.3 and 4 are bonafide purchasers. The court has also observed that there are various cutting and interpolations in the agreement to sell which makes

agreement to sell doubtful. It has also been observed that vide endorsement dated 20.03.2005, the period was extended and there is recital of delivery of possession, however, the same is doubtful.

- 8. The discretion exercised by the First Appellate Court does not suffer from any substantive error.
- 9. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.
- 10. Dismissed.
- 11. All the pending miscellaneous applications, if any, are also disposed of.

March 22, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO