

**RSA-2235-2024****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****134****RSA-2235-2024 (O & M)
Date of decision:30.09.2024****BALBIR SINGH**

...Appellant

Versus

MAHABIR SINGH

...Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**Present:-** Mr. Chetan Kapoor, Advocate,
for the appellant.Mr. Ravinder Chaudhary, Advocate,
for the caveator/respondent.

RAJBIR SEHRAWAT, J. (Oral)

1. The present regular second appeal has been filed by the appellant-defendant in the original suit, challenging the concurrent judgments and decrees passed by both the courts below, whereby a suit for possession by way of specific performance has been partly decreed.

2. The facts, in brief, as can be culled out from the judgment and decree of the lower Appellate Court, are that the respondent-plaintiff had filed a suit for possession by way of specific performance, asserting therein that the appellant-defendant had executed an agreement to sell dated 28.03.2012 in favour of the respondent-plaintiff; qua the suit property. The respondent had paid an amount of Rs.25 lakh as earnest money. The respondent had always been ready and willing to get the sale deed executed. However, the appellant-defendant did not perform his part of the

agreement. Hence, the suit was necessitated.

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3. After appreciating the evidence led by the respective parties, the trial Court partly decreed the suit, vide judgment and decree dated 17.10.2017. Aggrieved against the same, the present appellant filed the first appeal before the Court of Additional District Judge, Karnal. However, even the said appeal was dismissed by the lower Appellate Court, vide impugned judgment and decree dated 07.08.2024. Aggrieved against the same, the present appeal has been preferred.

4. Arguing the case, counsel for the appellant-defendant in the original suit, has submitted that both the courts below themselves have recorded a finding that the agreement is not proved to have been executed between the parties. Despite that, the suit has partly been decreed by both the courts below; qua return of the money. Hence, both the judgments and decrees passed by the courts below, deserve to be set aside. It has also been submitted that it has been the specific case of the appellant that the money which was received by the appellant-defendant, was not as earnest money, but as loan amount. The said loan amount was duly repaid by him. Therefore, there was no reason or basis for the courts below to decree the suit in favour of the respondent.

5. On the other hand, learned counsel for the caveator-respondent has submitted that the courts below have categorically decided issue No.1 in favour of the respondent-plaintiff. Therefore, although, the respondent-plaintiff was entitled to have the agreement specifically enforced, however, the Court has only ordered the return of the money. It is further submitted that, in any case, the receipt of money is not even disputed by the appellant-defendant. His plea has been that the money already stood returned to the

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respondent-plaintiff. However, no evidence has been led to substantiate the fact that the money was returned by the appellant.

6. No other argument has been raised.

7. Having heard learned counsel for the parties and having perused the case file, this Court finds that the respondent-plaintiff had filed a suit for specific performance; qua the agreement to sell dated 28.03.2012, in which an amount of Rs.25 lakh is claimed to have been paid to the appellant-defendant as earnest money. The trial Court had framed issue No.1 qua enforceability of the agreement between the parties. After appreciating the material on record, the trial Court has recorded a finding on issue No.1 in favour of the respondent-plaintiff. Therefore, the argument of learned counsel for the appellant that the agreement is not proved, loses its relevance, as such.

8. Moreover, the appellant has not disputed having received the money, though he claimed that the money was received by him only as an loan amount. But despite having asserted that the said loan was returned to the respondent, the appellant has not led any evidence on the file to show that the money was, in fact, returned by him at any time and in any manner. Therefore, no fault could be found with the impugned judgments and decrees passed by the courts below.

9. Otherwise also, the present appeal is directed against the concurrent judgments, decrees and the findings of fact recorded by both the Courts below. However, the concurrent findings of fact recorded by the Courts below are not even to be interfered with only for possibility of arriving at a different conclusion on re-appreciation of the evidence; unless



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there is an abject perversity shown to the Court or some substantial question of law is involved in the matter. However, learned counsel for the appellant has not been able to highlight any substantial question of law involved in the matter and this Court does not find any perversity in the findings recorded by both the Courts below.

10. In view of the above, finding no merit in the present appeal, the same is dismissed.
11. The pending miscellaneous application, if any, is also disposed of as such.

30.09.2024
parveen kumar

(RAJBIR SEHRAWAT)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No