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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2096-2016 (O&M)
Date of decision : 08.01.2024

Pargat Singh... Appellant(s)

Versus

Jasbir Kaur and others... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Varun Sharma, Advocate for the appellant.

None for respondent Nos.1 and 2.

Mr. Liaqat Ali, Advocate for respondent No.3.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellant against the concurrent findings of the Trial Court and the First Appellate Court. The Trial Court vide judgment and decree dated 29.08.2014 had held that the transaction between the parties was only a money transaction and that the plaintiff-appellant was entitled to recover the same especially as the period for returning the money stood extended vide the endorsement dated 10.11.2005 and the plaintiff-appellant was also held entitled to interest @ 6%. The relief of specific performance was declined. Aggrieved by the said judgment and decree, the plaintiff-appellant had preferred an appeal which was dismissed vide judgment and decree dated

19.01.2016. Hence, the present regular second appeal.

2. Learned counsel for the plaintiff-appellant has contended that the suit ought to have been decreed for specific performance and not for the alternative relief. The learned counsel has further contended that even if the alternative relief was granted, double the amount of the earnest money had to be returned.

3. *Per contra* the learned counsel for defendant-respondent No.3 has stated that both the Courts below have concurrently found that it is a money transaction and that the plaintiff-appellant is entitled to recover the same and hence the suit for specific performance has not been decreed and only the alternative relief has been granted.

4. I have heard the learned counsel for the parties.

5. In the present case both the Courts below had concurrently found that there were no reasons forthcoming as to why the attesting witnesses had not been examined by the plaintiff-appellant. DW2 - Tarsem Singh - who is also alleged to have witnessed the document, had stated that he signed the document in the context of a loan transaction and hence it was imperative that the plaintiff-appellant ought to have examined the attesting witnesses. The Trial Court held it to be a document executed in order to secure the loan. The argument of the learned counsel for the plaintiff-appellant that the suit ought to have been decreed for specific performance cannot be accepted in view of the fact that even the attesting witnesses of the agreement to sell were not examined and DW2 - Tarsem Singh - who appeared as one of the attesting witnesses, had stated that the agreement was only to secure the loan. In view thereof, the argument of the learned counsel for the plaintiff-appellant that the suit ought to have been decreed *in toto*

cannot be accepted. The second argument of the learned counsel for the plaintiff-appellant that the earnest money ought to have been doubled is an argument which has not seriously been contested by the learned counsel for the defendant-respondent. Once the document was held to be a document to secure the loan and both the Courts below relied on the same, double the amount of the earnest money as mentioned in the agreement ought to have been returned.

6. In view of the above, the present regular second appeal is partly allowed. The plaintiff-appellant is held entitled to double the amount of the earnest money as mentioned in the agreement. The plaintiff-appellant shall be entitled to recover Rs.2,20,000/- alongwith interest @ 9% per annum. The liability of the defendants being joint shall be limited only to the extent of the share which each of them have inherited from Joginder Singh.

7. The present appeal is partly allowed in the above terms. Pending applications, if any, also stand disposed off.

08.01.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO