

[118] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2365 of 2014
Date of Decision : 10.04.2024

Surender

...Appellant

versus

Lal Chand (deceased) through LR's and others

....Respondents

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

Present : Mr.Sandeep Kumar Yadav, Advocate
for the appellant.

Mr.Kapil Aggarwal, Advocate for respondent
No.1(i), 1(iii) and 1(iv).

ANIL KSHETARPAL, J. (ORAL)

[1] This is the plaintiff's regular second appeal against the concurrent findings of the fact arrived at Courts below while partly decreeing his suit for grant of alternative of relief of refund of earnest money alongwith interest while refusing relief of specific performance of the agreement to sell.

[2] Both the Courts below have found that the execution of the agreement to sell dated 10.08.2001 by Sh. Lal Chand in favour of Sh. Hazari Lal is proved. However, it has been observed that in the facts and circumstances of the present case, the plaintiff is not entitled to any discretionary relief on the following grounds:-

- i) Defendant is owner of total land measuring 13 Kanal out of which 06 Kanal is agreed to be sold. If the sale deed is executed, the defendant will not be left with any substantive land which may support his

family.

ii) Although it is recited in the agreement to sell that the possession of the suit property was handed over to the plaintiff at the time of execution of the agreement to sell, however, the plaintiff failed to prove his possession.

iii) The plaintiff has failed to give sufficient explanation as to why there was a difference of exact period of 12 months from the date of agreement to sell to the date agreed for execution of sale deed.

[3] The opinion has been formed by both the Courts that agreement to sell was in fact executed as a supportive document in order to secure repayment of the debt.

[4] This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

[5] Learned counsel representing the Appellant submits that once the execution of agreement to sell on payment of earnest money is proved and the plaintiff was always ready and willing to perform his part of the contract, the decree for specific performance should follow. He submits that both the Courts below have erred while refusing to grant relief of specific performance.

[6] Per contra learned counsel representing the respondents submits that both the Courts have given various reasons to deny the relief of specific performance and this Court should not interfere.

[7] Before the amendment of Specific Relief Act, 1963, Section 20 provided that relief of specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so. However, the discretion of the Court was required to be based upon sound and reasonable grounds guided by judicial principles and capable of correction by a Court of appeal. Thus, it was not mandatory for the Courts to grant relief for specific

performance if the agreement to sell is proved. In this case, the defendant while filing the written statement has submitted that he mortgaged 6 Kanals land in favour of the plaintiff (appellant) in order to secure repayment of the loan. It has been stated that plaintiff is a clever person and instead of taking his thumb impression and signature on the mortgage deed, the same has been taken on the agreement to sell. The discretion exercised by the Courts below does not appear to be suffering from any substantive error which may compel the second Appellate Court to interfere.

[8] Moreover, the appellant has failed to prove that he was delivered possession and he continued to cultivate the land. The period of nearly 23 years have elapsed. There is no plausible explanation on behalf of the appellant to explain the reasons for agreed to execute the sale deed after a period of complete one year particularly when 90 % payment was paid at the time of execution of the agreement to sell.

[9] Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

[10] Accordingly, the appeal is dismissed.

[11] All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

10.04.2024
Raman

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