



RSA-3270-2019 (O&M)

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

**RSA-3270-2019 (O&M)
Decided on : 04.08.2025**

Mohinder Singh

..... Appellant

Versus

Balwinder Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Rakesh Kumar, Advocate
for the appellant.

VIKRAM AGGARWAL, J (ORAL)**CM-8791-C-2019**

Prayer in the present application, filed under Section 151 CPC is for condonation of delay of 80 days in re-filing the accompanying appeal.

Heard.

For the reasons mentioned in the application which is duly supported by an affidavit, the same is allowed and the delay of 80 days in re-filing the accompanying appeal is condoned.

RSA-3270-2019

This is defendant's second appeal against the judgment and decree dated 16.07.2018, passed by the Court of Additional District Judge, Kapurthala dismissing the appeal filed by the defendant against the judgment and decree dated



29.07.2016, passed by the Court of Additional Civil Judge (Senior Division), Kapurthala vide which the suit for possession by way of specific performance, filed by the plaintiff was decreed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiff (Balwinder Singh) instituted a suit for possession by way of specific performance of agreement to sell dated 14.01.2011 alongwith consequential relief of permanent injunction. The case set up was that the defendant (Mohinder Singh), being owner in possession of land measuring 4 kanals 9 marlas (fully described in the plaint), situated in Village Inowal, Tehsil Bholath, District Kapurthala (hereinafter referred to as 'the suit land'), executed an agreement to sell dated 14.01.2011 with the plaintiff. The suit land was agreed to be sold to the plaintiff for a total sale consideration of Rs.7,50,000/- out of which Rs.6,72,000/- was received as earnest money. The sale deed was to be executed on 13.07.2011 on receipt of the balance sale consideration of Rs.78,000/-,

4. It was averred that the plaintiff approached the defendant prior to 13.07.2011 and tendered the balance sale consideration and other expenses which were to be incurred on the registration of the sale deed. However, despite the plaintiff remaining present in Tehsil Premises, Kapurthala on 13.07.2011 for the execution of the sale deed alongwith the balance sale consideration and other expenses, the defendant did not turn up. An affidavit was got attested by the plaintiff in token of his presence from the Executive Magistrate, Bholath.



5. A registered notice dated 14.07.2011 was also issued by the plaintiff calling upon the defendant to execute the sale deed and in pursuant of the same, the plaintiff again remained present in the office of the Sub Registrar, Bholath on 29.07.2011 alongwith the balance sale consideration and other expenses but the defendant again did not turn up. An affidavit was again attested by the plaintiff in token of his presence from the Executive Magistrate, Bholath. Finally, the suit was filed.

6. The defendant, in his written statement, raised preliminary objections as regards maintainability, cause of action etc. It was averred that the plaintiff had not approached the Court with clean hands. The case set up was that the defendant never intended to sell the suit land and in fact, in January, 2011, the defendant had approached the plaintiff seeking a loan of Rs.6,00,000/-. The plaintiff agreed to advance the said loan but imposed a condition of execution of an agreement to sell as security of the loan amount. Under compulsion, the defendant had to agree to the said condition and, therefore, the agreement to sell was executed.

7. It was averred that Rs.3,00,000/- out of a total amount of Rs.6,00,000/- was repaid. The plaintiff was requested to return the original agreement or to issue a receipt of Rs.3,00,000/- but the same was not done. It was averred that since the value of the suit land was more than Rs.50,00,000/-, there was no occasion to sell it for a meagre amount.

8. From the pleadings of the parties, the trial Court framed the following issues:-



1. Whether the plaintiff is entitled to the possession of the suit land through specific performance of the agreement to sell dated 14.01.2011 ? OPP
2. Whether the plaintiff is entitled to recover an alternative a sum of Rs.7,50,000/- from the defendant alongwith interest, if yes, then interest at what rate, on what amount and for which period ? OPP
3. Whether the plaintiff is entitled to relief of permanent injunction as he has prayed for ? OPP
4. Whether the suit is not maintainable in the present form ? OPD
5. Whether the plaintiff has no cause of action to file the present suit ? OPD
6. Whether this Court has jurisdiction to entertain and try the present suit ? OPD
7. Whether the plaintiff has not come to the Court with clean hand, if so, its effect ? OPD
8. Relief.
9. Parties led their respective evidence.
10. The trial Court decreed the suit. However, a decree for specific performance was not granted and instead, recovery of the earnest money alongwith interest @ 12% per annum from the date of the execution of the agreement to sell till the passing of the decree and future interest @ 9% per annum was ordered.
11. The defendant preferred an appeal which too was dismissed by the



First Appellate Court. Notably, the plaintiff did not prefer any appeal against the judgment of the trial Court seeking the relief of specific performance.

12. I have heard learned counsel for the appellant.

13. Learned counsel for the appellant submits that both Courts erred in decreeing the suit to the extent of refund of earnest money. He submits that the agreement to sell had been executed as security of the loan advanced and that, despite repayment of Rs.3,00,000/-, no receipt was executed nor was the agreement to sell returned. He submits that the said agreement to sell has been mis-utilized by the plaintiff. Learned counsel submits that the mere fact that the plaintiff did not prefer any appeal as regards the relief of specific performance in itself shows that the claim of the plaintiff was not genuine.

14. Learned counsel has referred to the judgments of both Courts and has submitted that the same are not sustainable.

15. I have considered the submissions made by learned counsel for the appellant but find the same to be devoid of merit. The execution of the agreement to sell dated 14.01.2011 was admitted. The case set up by the defendant was that a loan of Rs.6,00,000/- had been taken by him from the plaintiff and the agreement to sell had been executed as a security document and the real intention was not to execute an agreement to sell. The execution of the agreement to sell was, therefore, admitted. It was also proved by the attesting witness Paramjit Singh, who appeared as PW2 and Santokh Singh, Deed Writer, who appeared as PW3. They duly stated that the document was scribed and read over to the parties and



the parties put their signatures over the same in their presence. It was also stated that the defendant had appended his signatures on the agreement Ex.P2 after receiving the earnest money and after admitting the contents of the agreement to be correct. They were not cross-examined on the said issue.

16. Further, apart from the self serving statement of the defendant and similar statements of DW2 Mangal Singh DW3 Nirmal Singh, there was no other evidence as regards the loan of Rs.6,00,000/- having been advanced to the defendant. If the loan was of Rs.6,00,000/-, there was no occasion for the sale consideration to be Rs.7,50,000/- and payment of Rs.6,72,000/- as earnest money at that point of time. Still further, no evidence worth its name was produced to prove that Rs.3,00,000/- had been repaid.

17. No doubt, the trial Court did not grant the relief of specific performance. In a suit for possession by way of specific performance, the rule is to grant a decree of specific performance and the non-grant thereof is an exception. However, since no appeal was preferred by the plaintiff against the decision of the trial Court, the decree as passed qua recovery of earnest money was upheld. This Court is also not in a position to tinker with the same on account of the plaintiff not being before this Court.

18. Keeping in view the totality of the facts and circumstances, this Court finds no illegality in the decisions rendered by both Courts vide which recovery of the earnest money was ordered. No question of law arises for the consideration of this Court and no occasion arises for interference in the concurrent findings of fact recorded by both Courts.



That being so, the appeal is found to be bereft of merit and is accordingly dismissed.

Pending application(s), if any, shall stand disposed of accordingly.

04.08.2025
mamta

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No