



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

1. RSA-2441-2015 (O&M)
Reserved on: 15.05.2025
Date of decision: 16.05.2025

LACHHMAN DASS (DECEASED) THROUGH LRS. AND ANR.

..Appellants

Versus

JARNAIL SINGH AND ORS

..Respondents

2. RSA-2454-2015 (O&M)

RADHA KRISHAN AND ANR.

..Appellants

Versus

JARNAIL SINGH AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Khunger, Advocate
for the appellants.

Mr. Sangram Singh Saron, Advocate
Ms. Amisha Batra, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

I. Brief facts of the case:

1. With the consent of learned counsel for the parties, two connected regular second appeal involving identical issue shall stand disposed of by this common order.

2. The question that arises for adjudication in the present case is “whether the Courts can make out a new case for the plaintiffs?”

3. Sh. Lachhman Dass, Smt. Jamuna Bai agreed to sell 43 kanals and 19 marlas land in favour of Sh. Jarnail Singh, Sh. Jeet Singh and Sh. Baljinder Singh on 24.02.2006 for a total sale consideration of



Rs.35,43,470/- on receipt of earnest money of Rs.7,00,000/-. The only difference, in the other appeal is that Sh. Radha Krishan and Sh. Ashok Kumar sons of Sh. Lachhman Dass agreed to sell 198 kanals and 14 marlas land at the rate of Rs.6,45,000/- per acre for a total sale consideration of Rs.1,60,20,187/- on receipt of earnest money of Rs.28,00,000/-. The receipt of earnest money on execution of the agreements to sell is admitted between the parties. As per the two agreements, the sale deed was to be executed in both the cases on 27.05.2006, which was a holiday. The plaintiffs namely Sh. Jarnail Singh etc. claim that they visited the office of Sub-Registrar on 29.05.2006 but defendants did not come present as 27.05.2006 was a holiday. In both the cases, two suits were filed by the plaintiffs for possession by way of specific performance of the agreement to sell on 20.05.2009 in both the cases, which is six days before the period of limitation of three years was to expire.

4. The defendants claim that they visited the office of Sub-Registrar on 26.05.2006 as well as on 29.05.2006 and they got their affidavits attested from the Sub-Registrar in order to mark their presence.

5. The defendants also asserted that they sent notices through post as well as telegram on 30.05.2006, however, there was no response from the plaintiffs. It was also stated that plaintiff No.1 and 3 filed a complaint before the police alleging that the loan was advanced to the defendants but they have failed to refund the same, which was inquired into by the Deputy Superintendent of Police and it was found that there was agreement to sell but due to the decrease in the rates of land, the plaintiffs were not ready and willing to perform their part of contract.



6. The trial Court as well as First Appellate Court recorded concurrent findings of fact that the plaintiffs were not ready and willing to perform their part of the contract as the plaintiffs got their affidavit attested from the Notary Public and not from the Sub-Registrar. They also failed to respond to the notices issued by the defendants on 30.05.2006 communicated through post as well as telegram, however, the Courts have made out a new case for the plaintiffs to the effect that plaintiffs are entitled to refund of earnest money as it was a loan transaction.

II. Arguments addressed:

7. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with requisitioned record.

8. Learned counsel for the appellants while referring to the statement of plaintiff Sh. Jarnail Singh in both the cases, submits that when he was questioned on the availability of the balance sale consideration, he stated that the amount was lying at his home but he cannot produce any evidence of availability of remaining balance sale consideration on the stipulated date. The plaintiffs did not produce any evidence except his own statement to prove the availability of the amount.

9. Per contra, learned counsel for respondents submits that the Courts have found that there was a loan transaction, hence, only the refund has been ordered and the concurrent findings of fact require no interference.

III. Analysis and Discussion:

10. This Court has considered the submissions of learned counsel for the parties.



11. The plaintiffs filed two suits for possession by way of specific performance of agreement to sell. They prayed in the alternative for refund of earnest money, however, it was not their case that loan of Rs.7,00,000/- in one case and Rs.28,00,000/- in other case was paid to the defendants. When Sh. Jarnail Singh appeared in evidence, he never stated that the agreement to sell was only made to secure repayment of the loan. Thus, it is evident that the Courts have made out a new case, which was neither pleaded by the plaintiffs nor any evidence to that effect was led.

12. This Court in **Regular Second Appeal No.4698 of 2017, titled as “Om Prakash and others Vs. M/s Ganga Developers Pvt. Ltd.”, decided on 22.01.2020**, after discussing the various judgments passed by the Supreme Court including **M/s Kailash Nath Associates Vs. Delhi Development Authority (2015) 2 SCC (Civil) 502**, **Shree Hanuman Cotton Mills Vs. Tata Air Craft Ltd., (1969) 3 SCC 522** and **Satish Batra (supra)** has held as under:-

“Learned First Appellate Court has first relied upon the judgment passed in the case of Satish Batra (Supra). This Court has carefully read the aforesaid judgment. The aforesaid judgment is rather helps the defendants-appellants and not the plaintiff-respondent company. In the aforesaid judgment, Hon'ble the Supreme Court was examining the correctness of the Division Bench judgment of the Delhi High Court, in which out of total earnest money of ₹ 7,00,000/-, 50,000/- was ₹ permitted to be forfeited whereas 6,50,000/- was ordered to be ₹ refunded. The Supreme Court after examining the contract found that earnest money was paid on two different dates i.e. ₹ ₹ 4,00,000/- on 29.11.2005 and 3,00,000/- on 30.11.2005. The Supreme Court held after discussing various judgments of the Court that intended seller was justified in forfeiting the amount of 10% i.e. 7,00,000/-, therefore, the trial Court as well as ₹ First Appellate Court have not applied the aforesaid judgments in correct perspective.



The First Appellate Court has further relied upon a judgment passed by Hon'ble the Supreme Court in the case of Videocon Properties Ltd. (Supra). In the aforesaid judgment, the Supreme Court was examining the order passed by a Division Bench of Bombay High Court arising from interim order passed by the learned Single Judge. In the aforesaid case, earnest money had been refunded. Suit for recovery was filed by the intended purchaser who was a builder for grant of interest. In the aforesaid circumstances, learned Single Judge ordered creation of charge under Section 55(6)(b) of the Transfer of Property Act, 1882 which order was modified by the Division Bench. The Supreme Court reversed the judgment of the Division Bench and restored the order of the learned Single Judge. The aforesaid judgment nowhere lays down that the earnest money as per the contract cannot be forfeited.”

13. It is by now well settled that if in a suit for specific performance, the plaintiffs fail to prove their readiness and willingness, the amount of earnest money is liable to be forfeited.

14. In this case, in one case, the earnest money was Rs.7,00,000/- out of total sale consideration of Rs.35,43,470/-, whereas, in other case, the amount of earnest money was Rs.28,00,000/- out of total sale consideration of Rs.1,60,20,187/-. Hence, the entire earnest money is required to be forfeited.

IV. Decision:

15. Consequently, both the appeals are allowed.

16. The judgments passed by both the Courts below are set aside. Both the suits filed by the plaintiffs shall stand dismissed.

17. All the pending miscellaneous applications, if any, are also disposed of.

May 16th, 2025

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

(ANIL KSHETARPAL)
JUDGE