



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

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RSA No.5635 of 2015 (O&M)

Date of Decision :06.05.2025

Amrik Singh

.....Appellant

Versus

Makhan Singh (deceased) through LRs

..... Respondents

CORAM: HON'BLE MR.JUSTICE VIKRAM AGGARWAL

Present: Mr. N.K.Vadhera, Advocate for the appellant.

Mr. L.S.Lakhanpal, Advocate for the respondents.

VIKRAM AGGARWAL, J. (Oral):

This is defendant's second appeal against the judgment and decree dated 11.08.2015, passed by the Court of learned Additional District Judge Gurdaspur, dismissing the appeal filed against the judgment and decree dated 06.02.2014, passed by the Court of learned Additional Civil Judge (Sr. Divn.), Gurdaspur, vide which the suit for possession by way of specific performance of agreement to sell dated 09.09.2006 was partly decreed to the effect that alternative relief of recovery of earnest money of Rs.8,07,000/- was ordered.

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

3. Plaintiff (Makhan Singh) instituted a suit for possession by way of specific performance of agreement to sell dated 09.09.2006 of land measuring 16 kanals (fully described in the plaint) (hereinafter referred to as the suit land), situated in the revenue estate of village Waraich, Tehsil and District Gurdaspur. The case set up was that vide agreement to sell in question, the suit land had been agreed to be sold by the defendant for a total sale



consideration of Rs.8,50,000/- out of which earnest money of Rs. 8,07,000/- was received. The sale deed was to be executed by 09.09.2007 on receipt of the balance sale consideration. It was averred that since 09.09.2007 was Sunday, the plaintiff remained present in the office of the Joint Sub Registrar Kahnuwan on 10.09.2007 along with the balance sale consideration and other expenses but the defendant did not turn up. The plaintiff, therefore, got his presence marked in the form of an affidavit which was duly attested by the Joint Sub Registrar, Kahnuwan. It was averred that the plaintiff was always ready and willing to perform his part of the contract. He even served the legal notice dated 14.09.2007 upon the defendant but no response was received, as a result of which, the suit was filed.

4. The suit was opposed by the defendants. It was denied that an agreement to sell had been executed. All other submissions made in the suit were denied.

5. From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the defendant executed a valid agreement to sell dated 09.09.2006 in favour of the plaintiff? OPP

2. Whether the plaintiff always remained and is till ready and willing to perform his party of the agreement? OPP

3. Whether the plaintiff is entitled to specific performance of agreement to sell dated 09.09.2006 or in the alternative recovery of Rs.10,07,000/- as earnest money and damages? OPP

4. Relief.

6. Parties led their respective evidence.

7. Vide judgment and decree dated 06.02.2014, Court of learned Additional Civil Judge, (Sr. Divn.) Gurdaspur, partly decreed the suit and



granted the alternative relief for recovery of earnest money of Rs.8,07,000/- along with interest @ 8% *per annum* from the date of execution of the agreement to sell till the filing of the suit.

8. The said decision was challenged by the defendant in appeal but the same was dismissed by the Court of learned Additional District Judge, Gurdaspur, vide judgment and decree dated 11.08.2015, leading to the filing of the present second appeal.

9. I have heard learned counsel for the parties.

10. Learned counsel for the appellant has submitted that since it had been found that a sum of Rs. 8,07,000/- had, in fact, been borrowed by the defendant from the plaintiff, it was incumbent upon the plaintiff to prove that he had a licence under the provisions of the Punjab Registration of Accounts Act 1930, and that he was a money lender. He submits that in the absence of the same, no suit for recovery could have been filed.

11. Per contra, learned counsel representing the plaintiff has submitted that this was never the pleaded case of the defendant and, under the circumstances, no such plea can be raised.

12. I have considered the submissions made by learned counsel for the parties.

13. Firstly, no such stand was taken by the defendant in the written statement. Be that as it may, the first Appellate Court duly took note of the arguments addressed in this regard by the defendant and it was held that since it was not a suit for recovery which had been filed but was a suit for possession by way of specific performance to agreement to sell dated 09.09.2006, the objection would not be sustainable.

14. Admittedly, the plaintiff filed a suit for possession of the suit land



by way of specific performance of agreement to sell dated 09.09.2006. The Courts, after scrutinizing the evidence, found that it appeared to be a case of an amount of Rs.8,07,000/- having been advanced and the agreement having been executed. No suit for recovery, on the basis of the amount, having been advanced, was filed. The Courts, therefore, rightly granted the alternative relief instead of granting the relief of specific performance. Since it was not a suit for recovery simpliciter and it was not the case of the plaintiff that the amount had been advanced as loan, there was no requirement of proving that the plaintiff was a money lender or that he had the requisite licence. Both Courts, therefore, did not commit any illegality in decreeing the suit.

15. No question of law arises for consideration by this Court warranting interference in second appeal.

16. In view of the above, I do not find any merit in the present appeal and the same is accordingly dismissed.

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

(VIKRAM AGGARWAL)
JUDGE

06.05.2025

Manoj Bhutani

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