126 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3180-2025 (O&M)
Date of Decision: 16.09.2025

SWINDERJIT KAUR

....Appellant

Versus

MOHINDER KAUR

...Respondent

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Harchand Singh Batth, Advocate
for the appellant.

Parmod Goyal, J. (Oral)

Appellant is aggrieved by the impugned judgment and decree dated 22.11.2021, passed by learned Civil Judge (Junior Division), Amritsar and judgment and decree dated 27.05.2025, passed by learned Additional District Judge, Amritsar.

2. Appellant/plaintiff had filed a suit for possession by way of specific performance of agreement to sell dated 01.05.2018, allegedly executed by defendant, whereby defendant had agreed to sell the house which was lying in dilapidated condition. Appellant/plaintiff had also sought for permanent injunction and in alternative he had preferred to seek recovery of Rs.6,00,000/- i.e. double the amount of earnest money.

3. The learned Court of first instance vide judgment and decree dated 22.11.2021, concluded that suit of appellant/plaintiff has to fail as defendant was never owner of suit property and, therefore, agreement to sell

dated 01.05.2018 could not have been executed. Accordingly, suit was dismissed. On appeal the finding of learned Court of first instance that agreement to sell dated 01.05.2018 is not executable and, therefore, no specific performance can be granted, was upheld and claim of plaintiff regarding specific performance was declined by First Appellate Court. However, as both the Courts had found that agreement was entered by defendant the learned Appellate Court had ordered refund of earnest money with 9% interest from the date of filing of suit uptill date of decree and future interest @6% p.a. from the date of decree till realization.

4. Appellant/plaintiff is not fully satisfied and is aggrieved by order of learned Appellate Court granting recovery rights to the extent of Rs.3,00,000/-. It is the case of appellant that as per agreement on violation of agreement an amount of Rs.6,00,000/- was payable by defendant and, therefore, appellant ought to have been allowed recovery of Rs.6,00,000/- instead of Rs.3,00,000/-.

5. Admittedly, both the Courts have found that defendant was not entitled to execute the agreement to sell. Learned counsel for appellant/plaintiff could not show any fault with the findings of both the Courts that defendant was not the owner and, therefore, suit for specific performance could not have been decreed. The only contention raised on behalf of appellant/plaintiff is regarding recovery of Rs.6,00,000/- as per penal clause in the agreement instead of Rs.3,00,000/- recovery of which has been decreed by learned First Appellate Court.

6. I do not find any fault with the approach of learned First

Appellate Court. The agreement in fact was not executable. It was duty of appellant/plaintiff to verify the right of defendant to sell the property before he entered in agreement. The agreement to sell at the most is acknowledgment of amount given to defendant by plaintiff and, therefore, in these circumstances, refund of amount paid by appellant/plaintiff to defendant is fully justified and cannot be interfered. No question of law arises. Accordingly, appeal is dismissed.

(PARMOD GOYAL)
JUDGE

16.09.2025
chiranjeev

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No