

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1039 of 2010(O&M)
Date of decision : October 20, 2015

Lakhi **Appellant**
Versus
Mahavir **Respondent**

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Shailendra Sharma, Advocate
for the appellant.

Mr. J. S. Hooda, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The appellant-defendant is in Regular Second Appeal against the concurrent finding of both the courts below whereby the suit claiming possession by way of specific performance of the agreement to sell dated 26.9.2000 has been decreed.

Mr. Shailender Sharma, learned counsel for the appellant-defendant in support of his grounds of appeal raised the following submissions:-

i) As per the terms and conditions of the agreement to sell, a land measuring 8 Kanals 7 Marlas was allegedly agreed to be sold for a total consideration of ₹3 lacs and earnest money of ₹2,30,000/- is being stated to have been paid.

ii) The stipulated date of agreement to sell was 18.12.2000.

iii) The agreement to sell envisage that it was a registered one, whereas, it was not.

iv) The attesting witness Parkash Singh-PW-3 appeared in examination-in-chief but did not appear for cross examination, another attesting witness Puran Singh has not been examined by the plaintiff.

v) PW-2 Lakhan Lal who is the alleged scribe of agreement to sell stated that the agreement to sell was prepared by him and ₹1,23,000/- was exchanged in his presence, whereas, agreement to sell mentions about a payment of ₹2,30,000/-.

vi) The readiness and willingness on behalf of the plaintiff was conspicuously absent, inasmuch as the suit was filed on 2.12.2002, after sending a legal notice dated 2.2.2001.

vii) Certain clauses of the agreement to sell would show that the terms and conditions have been incorporated on a blank stamp paper.

He thus, submits that all the aforementioned facts have not been noticed by the courts below, therefore, there is illegality and perversity and thus, the following substantial questions of law arise for determination by this court:-

“Whether the courts below misappreciated the oral and documentary evidence on record while decreeing the suit and of the plaintiff/respondent?”

Whether the due execution of agreement to sell and receipt regarding payment of earnest money can be held to be proved in the absence of evidence?”

Learned counsel for the respondent-plaintiff submits that the attesting witness of the agreement to sell, though, had appeared in the examination-in-chief but on the request of the counsel for the appellant-defendant his cross-examination was deferred on many occasions and therefore he did not appear, but it could not fetter the adjudication between the parties to the lis. Though, the agreement to sell was not registered but the fact remains that the receipt of ₹1,23,000/- has been proved by the testimony of PW-2/scribe. The respondent-plaintiff was ready and willing through out from the date of agreement to sell, till the filing of the suit inasmuch as, a legal notice dated 2.2.2001 was sent which has been received by the defendant but there was no reply and after having contacted the defendant on many occasions, which did not yield any concrete result, which compelled the respondent-plaintiff to file the suit. Thus, there is no illegality and perversity in the impugned order as there is very little scope for interference under Section 100 of the Code of Civil Procedure, much less no substantial question of law arise for determination by this court.

I have heard learned counsel for the parties and appraised the paper book.

It is a settled law that plaintiff has to stand on his own legs. The respondent-plaintiff has not been able to prove the execution, much less the original payment of ₹2,30,000/-. The scribe-PW2 unequivocally submitted in the cross examination that ₹1,23,000/- was paid. The attesting witness had appeared in the examination-in-chief but did not offer himself for cross examination.

Ex facie the agreement to sell is not registered. On a glance of the agreement to sell, it is irresistibly concluded that the thumb impressions are existing on the typed material, it appears that the agreement to sell has been drafted on a blank thumb marked stamp paper. The readiness and willingness is an essential, requirement for seeking the discretionary relief under Section 20 of the Specific Relief Act, 1963. The stipulated date for execution of the registration of the sale deed was 18.12.2000 after sending a legal notice on 2.2.2001, the respondent-plaintiff slept in slumber and woke up after 1 year and 10 months and filed the suit on 2.12.2002 and no explanation has come forth for such a long period as to how his readiness and willingness was in existence.

In view of what has been noticed above, in my view, both the courts below have not noticed the aforementioned facts while exercising the discretionary relief in favour of the respondent-plaintiff whereas the suit, in my view, was liable to be dismissed.

The impugned orders are modified. The suit is partly decreed. In essence, the appellant-defendant is entitled to refund a sum of ₹1,23,000/- with interest at the rate of 6% per annum from the date of filing of the suit i.e. 2.12.2002 till its realization.

Decree sheet be prepared accordingly.

The appeal stands disposed of.

(AMIT RAWAL)
JUDGE

October 20, 2015
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