

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2263 of 2010(O&M)
Date of decision: 17.12.2015

Risal Singh

... Appellant

Versus

Khem Chand

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Vijay Singh Kajla, Advocate for the appellant.
Mr. Parminder Singh, 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?

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was dismissed by the trial court vide judgment and decree dated 25.02.2006. As even an appeal preferred against the said decree failed and was dismissed vide judgment dated 08.10.2009, plaintiff is before this court vide this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

Plaintiff prayed for a decree for specific performance of the agreement to sell dated 22.12.1995, qua a land measuring 8 bighas 0 biswa. It was maintained that a sum of ₹ 1,75,000/- was paid to the defendant by way of earnest money and the balance ₹ 15,000/- was to be paid at the time of

execution of the sale deed. The date fixed for execution and registration of the sale deed was 21.12.1996. And, pursuant to the agreement to sell, plaintiff was even put in possession of the suit property. As 21.12.1996 was a Saturday, plaintiff went to the office of Sub Registrar, Nilokheri on 23.12.1996, but the defendant did not turn up to perform his part of the contract. And, thus, plaintiff has always been ready and willing to perform his part of the contract.

In defence, it was pleaded, inter alia, that the agreement being propounded by the plaintiff was a forged document, as no such agreement was entered into between the parties. Therefore, there was no occasion to receive a sum of ₹ 1,75,000/- by way of earnest money and to put the plaintiff in possession of the suit property.

On a consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that; plaintiff produced Pala Ram (PW1), who had allegedly scribed the agreement, but he had neither put his signatures nor any seal on the agreement in question. He pleaded ignorance, in his cross-examination, as regards the payment of earnest money to the defendant either in cash, by cheque or even by draft. Likewise, Ram Rakha (PW3), who happened to be one of the attesting witnesses of the alleged agreement, conceded in his cross-examination that the agreement in question had already been written and was not signed by the

parties in his presence. Further, even the earnest money was not paid to the defendant in his presence. Sunder Singh (PW4), another attesting witness of the agreement, deposed that the agreement in question was written by Pala in Tehsil at the seat of Shri G.C. Arora, Advocate, whereas the other attesting witnesses of the agreement testified that the agreement was got typed in the shop of Pala in the market. Plaintiff claimed to have been put in possession of the suit property pursuant to the agreement. However, nothing was brought on record to show that the plaintiff was ever in possession of the suit property. On the contrary, evidence led by the defendant proved that the suit land was always in possession of the defendant. In fact, the plaintiff was even restrained from interfering in his possession vide a civil court decree. Not just that, a criminal case under Sections 411 and 506 of the Indian Penal Code was registered against the plaintiff and his son, as they attempted to forcibly dispossess the plaintiff. Evidence on record proved that plaintiff and his son were commission agents and defendant used to sell his crops through their agency and there was a dispute qua some money transaction between the two. Something, that was fully corroborated by testimony of Balbir Singh (DW6), who happened to be the son of the plaintiff. But, plaintiff in his cross-examination categorically deposed that he was neither the commission agent nor was engaged in any such business.

And, thus, there was no dispute as regards any money transaction with the defendant. Still further, the case set out by the plaintiff was that prior to the execution of the agreement, the name of the defendant was duly reflected in the record of rights, but the deposition of Nirmal Singh, Patwari (DW5) completely falsified the said version, as name of defendant was entered in the revenue record for the first time on 12.06.1996 i.e. after execution of the alleged agreement. It would be apposite to point out at this juncture that the total sale consideration was ₹ 1,90,000/- out of which, as per the case set out by the plaintiff, a sum of ₹ 1,75,000/- was paid by way of earnest money, meaning thereby, only ₹ 15,000/- remained to be paid and the plaintiff was even put in possession of the suit property. It defies logic that having paid almost the entire sale consideration and having been put in possession, plaintiff would have still deferred the date for execution of the sale deed for a year. In any case, he failed to prove that he was ever put in possession of the suit property. Still further, plaintiff claimed to have visited the office of Sub Registrar for execution of the sale deed on 23.12.1996, but the defendant did not turn up to perform his part of the contract. Again, what needs to be noticed is that for a period of over one year till filing of the suit on 25.03.1998, plaintiff never even served the defendant with any notice to execute the sale deed

or express his grievance for his failure to perform his part of the contract.

Learned counsel for the appellant could not point out as to how the conclusions that had concurrently been recorded by both the courts were either contrary to the position on record or suffered from any material illegality.

In the wake of the position as set above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is accordingly dismissed.

December 17, 2015
Rajan

(Arun Palli)
Judge