

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Regular Second Appeal No. 457 of 2012 (O&M)
Date of decision: 24.7.2015

Sat Narain

.. Appellant

v.

Phulu

..Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

**Present: Mr. Vijay Singh Kajla, Advocate for
Mr. Kulwant Singh, Advocate for the appellant.**

...

Rajesh Bindal J.

The plaintiff having failed in both the courts below has filed the present appeal, whereby the suit filed by him for specific performance of agreement to sell dated 24.12.2004, was dismissed.

It is claimed that agreement to sell dated 24.12.2003 was entered into between the parties for sale of 2 kanals of land for a total consideration of ₹ 52,500/-. ₹ 22,500/- were paid as earnest money. Last date for execution of the sale deed was fixed as 25.5.2004. On 18.5.2004, another sum of ₹ 10,000/- were paid and the target date was extended to 24.12.2004. Before that date, the respondent agreed to sell another piece of land measuring 2 kanals and the total consideration for 4 kanals was ₹ 1,25,000/-. New agreement to sell dated 24.12.2004 was executed. ₹ 52,500/- were paid on that date. After adding ₹ 32,500/- paid earlier, the total amount paid was ₹ 85,000/-. ₹ 40,000/- were to be adjusted, which were payable to the appellant on account of mortgage money, which the appellant was entitled to receive on account of mortgage of part of land by

the respondent with the appellant. The last date for execution of the sale deed was fixed as 31.12.2004. It was alleged that the sale deed having not been got registered, the suit was filed, which was dismissed by both the courts below.

The primary issue under consideration before the courts below was that whether there was a valid agreement to sell available on the basis of which the relief could be claimed by the appellant-plaintiff. The agreement to sell dated 24.12.2004 is based on the earlier agreement to sell dated 24.12.2003. Both the courts below found that the alleged agreement to sell dated 24.12.2003 could not be proved by the appellant. There is no mention of the agreement to sell dated 24.12.2003 in the agreement to sell dated 24.12.2004, with reference to the fact that earnest money earlier paid is to be accounted for. There is no separate receipt for payment of earnest money of ₹ 22,500/-, whereas for payment of ₹ 10,000/- on 18.5.2004, when the date for execution of the sale deed was allegedly extended, there is a receipt. This puts a dent on the credibility of the document. It could not be explained as to why the sale deed was not got registered on the date when fresh agreement to sell dated 24.12.2004 was got executed, when allegedly the entire sale consideration had already been paid or adjusted. In the legal notice, the appellant claimed that the entire amount of sale consideration of ₹ 1,25,000/- was paid on 24.12.2004. On the agreement to sell dated 24.12.2003, names of the witnesses and the Deed Writer had been adjusted not below the text of the agreement, rather, on one side. This created serious doubts. The agreement to sell dated 24.12.2004, on the basis of which the suit had been filed, was having three witnesses, namely, Om Parkash, Kuldeep and Ramesh. Though the names of Om Parkash and Kuldeep had been written with type-writer in the same manner as the agreement to sell was, however, the name of Ramesh was added with pen. Only Ramesh was produced as a witness in court, whose presence at the time of execution of the agreement to sell was found to be highly doubtful. Had he been present there, even his name would also have been typed instead of hand written. Even his statement runs contrary to the facts pleaded by the plaintiff, wherein he stated that ₹ 85,000/- were paid by the appellant-plaintiff to the

respondent-defendant on the date of execution of the agreement to sell, whereas the case set up by the appellant-plaintiff was that ₹ 52,500/- were paid on that date. Thus, it has been rightly concurrently found by both the courts below that the document, on the basis of which the claim was sought to be made, was surrounded by suspicious circumstances not worth enforceable.

Another contention sought to be raised was that the application filed by the appellant for seeking permission to lead additional evidence was not decided by the lower appellate court is also merely to be noticed and rejected, as permission was being sought to produce other witnesses to the agreement to sell, for which the appellant had ample opportunity which he failed to avail of. No case is made out even for permitting the appellant to lead additional evidence.

For the reasons mentioned above, I do not find that there is any error in the judgments and decrees of both the courts below. No substantial question of law arises in the present appeal. Accordingly, the same is dismissed. Consequently, the accompanying applications are also dismissed.

(Rajesh Bindal)
Judge

24.7.2015
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