

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 101

Regular Second Appeal No.2089 of 2013 (O & M)

Date of Decision: *September 30, 2015*

Harcharan Singh

..... APPELLANT

VERSUS

Sukhbir Singh & others

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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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?

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PRESENT: - Mr. B.S. Mann, Advocate, for Mr. G.S. Nagra,
Advocate, for the appellant.

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Jaspal Singh, J

1. Dissatisfied with judgments and decrees dated November 14, 2009 and November 20, 2012 passed by the courts below, defendant No.1 has approached this Court by way of instant regular second appeal.
2. Concisely, facts giving rise to the instant appeal are that plaintiff entered into an agreement of sale dated July 8, 2002 in respect of land measuring 16 kanal, fully detailed and described in the head of plaint as well as decree, for a consideration of ₹ 5 lac per acre and received a sum of ₹ 2,96,000/- as earnest money. The date stipulated for

execution and registration of sale deed was on or before July 8, 2003. Subsequently, it came to light that appellant - defendant No.1 had already executed an agreement of sale in respect of suit property in favour of Mohinder Kaur Ladi besides the fact that land was lying hypothecated with the bank. Plaintiff appeared before the Sub Registrar, Dasuya, on the stipulated date with a view to get the sale deed executed in terms of agreement of sale dated July 8, 2002 but defendant No.1 failed to turn up. Plaintiff remained ready and willing, and is still ready and willing to perform his part of contract. Since defendant No.1 did not execute and registered sale deed in terms of agreement of sale dated July 8, 2002, plaintiff preferred the suit for specific performance. The suit was resisted by defendant(s) alleging that agreement of sale was nothing but a money transaction and it was not the intention of parties to execute and register the sale deed on the basis thereof. It was only prepared as security document.

3. Learned trial court afforded ample opportunities to the parties to conclude their evidence in respect of their respective claim and they led oral as well as documentary evidence. After appraisal of the evidence adduced by them and hearing learned counsel for parties, learned trial court decreed the suit vide judgment and decree dated November 14, 2009. Dissatisfied with the aforesaid judgment and decree, defendant No.1 preferred an appeal but that was also dismissed

by learned Additional District Judge, Hoshiarpur, on November 20, 2012 which necessitated the filing of instant appeal.

4. While assailing the judgments and decrees passed by both the courts below, it has been argued by learned counsel for appellant – defendant No.1 that his intention was not to sell away his property, rather, the agreement in question was nothing but a transaction to secure the repayment of loan. It is an undisputed fact that agreement of sale (Ex.P1) remained with one Chaman Lal continuously for a period of 6/7 months for the reason that it would stand cancelled in case the amount of earnest money recited in the agreement is returned/repaid. Said Chaman Lal has not been examined by the plaintiff for the reasons best known to him.

5. It was next argued by learned counsel that the date stipulated for execution of registration of sale deed was July 8, 2003 whereas the plaintiff has filed the suit seeking specific performance of agreement on March 9, 2004, that too without furnishing any explanation with regard to delay in filing the suit. Similarly, plaintiff also failed to prove on record the source of his financial capacity to pay a sum of ₹ 2,96,000/- to appellant – defendant No.1. Both the courts below have erred in appreciating the aforesaid aspect of the case.

6. This Court has bestowed due consideration to the aforesaid submissions made by learned counsel for parties but find the same to be without any legal and factual substance.

7. It would be apt and proper to mention here that appellant – defendant No.1 executed an agreement of sale (Ex.P1) in his favour in respect of the land in question @ ₹ 5 lac per acre and received a sum of ₹ 2,96,000/- as earnest money whereas case of appellant – defendant No.1 is that the agreement of sale is nothing but a loan transaction brought into existence just as a security for repayment of the loan amount which has otherwise been incorporated in the agreement as earnest money. There is nothing on the record to suggest that appellant – defendant No.1 ever raised any finger or lodged any complaint alleging the misuse of agreement of sale in question.

8. As far as agreement (Ex.P1) is concerned, that stands proved beyond doubt, especially in the circumstances that appellant – defendant No.1, when subjected to cross examination, has categorically admitted that agreement of sale (Ex.P1) was scribed by Kamal Singh, Deed Writer, at his instance and he appended his signatures thereon. A sum of ₹ 2,96,000/- has also been admitted to have been received by him. Here, it would also be proper to reflect the testimony of DW-2, Dalip Singh, examined by appellant – defendant No.1, who, in clear and unambiguous terms, has deposed that plaintiff and defendant No.1 signed the agreement (Ex.P1) in the presence of Chaman Lal as well as Inderjit Singh. Appellant – defendant No.1 has also admitted his signatures on the agreement and in such circumstances, burden heavily lies upon appellant – defendant No.1 to prove that agreement (Ex.P1)

is/was a loan transaction and it was not the intention of parties to execute and register the sale deed in pursuance thereof. Though, there is an endorsement appended at the back of agreement of sale (Ex.P1) but appellant – defendant No.1 has feigned ignorance in respect thereof. There is no cogent or convincing evidence that any part of the earnest money was ever repaid/ returned to the plaintiff, rather, agreement of sale (Ex.P1) stands fully proved. Moreover, both the courts below have given concurrent findings and in view of the discussion made above, same are not required to be interfered with by this Court, rather, this Court is of the considered view that findings recorded by both the courts below are absolutely in consonance with the evidence available on record as well as the settled proposition applicable to the facts and circumstances of this case. Without any hesitation, it can safely be observed that there is no question of law what to talk of any substantial question requiring the decision by this Court.

9. In the light of what has been discussed above, this Court does not find any merit in the regular second appeal.

10. Dismissed.

September 30, 2015
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(Jaspal Singh)
Judge