

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 282 of 2013(O&M)
Date of decision : August 10, 2015

Gurmeet Singh and another

..... Appellants

Versus

Darshan Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Adarsh Jain, Advocate
for the appellants.

Mr. Jasbir Singh Chahal, Advocate
for respondent Nos. 1 and 2.

Mr. Aman Pal, Advocate
for respondent Nos. 3 to 5.

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 challenge in the present appeal is against the judgment and decree of the lower appellate court whereby the appeal filed by the respondents-plaintiffs against the judgment and decree of the trial court dated 16.4.2010 whereby the suit filed by respondents-plaintiff Nos. 1 and 2 for specific performance for recovery of earnest money was decreed in part i.e whereby instead of grant of relief of specific performance only relief of refund of earnest money was ordered.

Mr. Adarsh Jain, learned counsel appearing on behalf of the appellants submits that the vendor i.e defendant Nos. 1 to 3 had entered into an agreement to sell of a land measuring 12 Kanals vide agreement to sell dated 25.8.2003 and the sale deed was executed on 23.1.2004. The plaintiff had set up an agreement to sell dated 24.9.2003 allegedly executed by defendant Nos. 1 to 3 in his favour and on execution of the sale deed filed suit on 24.12.2003. He further submits that since the appellant-defendant No. 4 to 5 had proved the ingredients of Section 68 of the Indian Evidence Act, 1872 and examined the attesting witness DW-4-Gursharan Singh who proved the execution of the agreement, much less receipt of the earnest money and therefore, the lower appellate court has committed illegality and perversity in decreeing the suit of the respondent-plaintiff in toto.

Mr. J. S. Chahal, learned counsel appearing on behalf of respondent Nos. 1 and 2-plaintiffs submits that judgment and decree rendered by the lower appellate court is fair, legal and justified as defendant Nos. 4 and 5 have not discharged the onus by examining the stamp vendor, other attesting witnesses and deed/scribe writer and therefore, there is no illegality and perversity in the award.

Learned counsel appearing on behalf of the appellant, in rebuttal submits that since the appellants had already examined one witness DW-4 Gursharan Singh, therefore, following substantial questions of law arise for determination by this Court:-

i) Whether the agreement to sell is to be proved by

examining one of the attesting witnesses still scribe and stamp vendor are also required to be examined for proving execution of an agreement?

ii) Whether plea of bona fide purchaser can be defeated only by attributing knowledge of prior agreement and whether such a finding can be based on a remote possibility?

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

Section 68 of the Indian Evidence Act, 1872 leaves no manner of doubt that the document is required by law to be attested, it shall not be used as evidence until one attesting witness at least, has been called for the purpose of proving its execution.

DW-4 Gursharan Singh has proved the execution of the agreement to sell dated 25.8.2003, much less payment of earnest money. Not only this, even vendors defendant Nos. 1 to 3 had also admitted the agreement to sell in favour of defendant Nos. 4 and 5.

In view of such position, there was no occasion for the lower appellate court to reverse the finding of the trial court which only granted relief of refund of earnest money. The reasoning given by the lower appellate court that the appellant-defendant Nos. 4 and 5 had only examined one attesting witness, in my view, is essential requirement of law, particularly when, the vendors have admitted execution of the agreement.

Accordingly, the appeal is allowed. The substantial

question of law noticed above is answered in favour of the appellants-defendants and against the plaintiffs-respondents. The judgment and decree passed by the lower appellate court is set aside and that of the trial court is maintained.

(AMIT RAWAL)
JUDGE

August 10 , 2015
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