107 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 1315 of 2015 (O&M)
Date of Decision: December 07, 2015

Mukhtiar Singh .... Appellant

vs.

Didar Singh (through LRs) and others .... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. K.S. Boparai, Advocate for the appellant.

1. Whether Reporters of Local Newspapers 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?

<u>Kuldip Singh J.(Oral)</u>

<u>CMs-3688-C and 3689-C of 2015</u>

There is delay of 10 days in filing and 109 days in refiling the present appeal.

For the reasons mentioned in the applications, supported by affidavits, delay of 10 days in filing and 109 days in refiling the present appeal is condoned, subject to all just exception.

Applications stand disposed of.

<u>RSA-1315-2015</u>

Impugned in the present regular second appeal is the judgment and decree dated 07.04.2014 passed by learned Addl. District Judge, Ludhiana, affirming the judgment and decree dated 29.05.2012 passed by learned Civil Judge (Jr. Divn.), Ludhiana, vide which in a suit of the plaintiff for specific performance of the agreement dated 28.11.1996 executed by the defendant, the lower court partly decreed the suit and granted alternative relief for recovery of ₹2,24,000/- along with interest @ 6% per annum from the date of filing of the suit i.e. 11.08.1999 till its actual realization.

The plea of learned counsel for the appellant is that once the agreement is proved, decree for specific performance should have been passed.

The brief facts of the case are that as per the case of the plaintiff himself, the defendant was in need of money. Therefore, he executed an agreement to sell dated 28.11.1996 for ₹3,08,442/- regarding land measuring 16 kanals, 9 marlas, fully detailed in the headnote of the plaint. ₹1,50,000/- were paid as earnest money. It is also the case of the plaintiff that earlier also, an agreement dated 22.11.1994 for sale of land measuring 36 kanals @ ₹70,000/- per acre in favour of the plaintiff was executed. ₹50,000/- were paid as earnest money. The date of the execution and registration of the sale deed was fixed as 30.11.1996 on receiving the balance sale consideration. However, instead of executing the sale deed, the defendant entered into a fresh agreement to sell dated 28.11.1996 with the plaintiff and also agreed to adjust the interest of ₹24,000/- regarding said agreement (i.e. 12.11.1994) in the present agreement by considering it as part payment of the earnest money. In this way, the total sum of ₹2,24,000/- stood paid to the defendant. The sale deed was to be executed on or before 15.04.1997. However, the defendant mortgaged the suit land to Amarjit Singh son of the plaintiff for ₹2,00,000/- on 02.12.1996 by executing mortgage deed coupled with delivery of possession. The mortgage was redeemed in July 1998 but the defendant did not execute the sale deed. Upon which, the plaintiff instituted a suit on 13.08.1999.

In the written statement, the defendant denied the execution of the agreement and pleaded that he was in need of some money to send his son abroad. He approached the plaintiff in March 1996 for financial assistance to send his son to Australia. ₹70,000/- were advanced to him in cash and in lieu of that the plaintiff got executed a registered special power of attorney dated 18.04.1996, bearing wasika No.513 which was later on revoked on 31.05.1999 bearing wasika No.1118. The defendant was again in need of money in the month of December, 1996. Therefore, he again approached the plaintiff and a sum of ₹1,50,000/- were advanced by the plaintiff to him vide three cheques. The plaintiff deducted ₹20,000/- from the said amount and the defendant mortgaged the suit land with the son of the plaintiff, vide mortgage deed dated 02.12.1996. He also mortgaged another land measuring 17 kanals 8½ marlas with Malinder Kaur, wife of the plaintiff for ₹2,00,000/-. The defendant claimed that he returned the mortgage money and got the land redeemed from Amarjit Singh but Paramjit Singh and Malinder Kaur refused to redeem the land.

The defendant filed the suit against Paramjit Singh and Malinder Kaur, which is pending before the civil court. He claimed that the alleged agreement is forged and fabricated and is prepared after obtaining the signatures of the defendant on blank stamp papers by misrepresenting him while advancing the loan amount.

Both the courts below came to the conclusion that it was a loan transaction. Therefore, the specific performance of the agreement was refused. At the same time, it was held that the agreement was executed and is not forged and fabricated.

I have heard learned counsel for the appellant and have also carefully gone through the case file.

There are many facts to show that the findings recorded by both the courts below are correct and are in accordance with law.

Firstly, it comes out that the defendant had executed prior agreement regarding another land measuring 36 kanals @ ₹70,000/- per acre on 22.11.1994. However, on 28.11.1996, he executed the present agreement in dispute to sell his land measuring 16 kanals 9 marlas for ₹3,08,442/-. ₹1,50,000/- were paid as earnest money and as per case of the plaintiff himself, an amount of ₹24,000/- being interest of the earlier agreement was also adjusted towards the earnest money in the subsequent agreement (i.e. 28.11.1996) and in this way, the total earnest money amounting to ₹2,24,000/- was paid including the previous earnest money of ₹74,000/-, vide agreement dated 22.11.1994. Then a special power of attorney was also executed on 18.04.1996, which remained in operation for more than 3 years till 31.05.1999 when it was revoked by the defendant.

It was further claimed that the defendant had also mortgaged the same land with Amarjit Singh son of the plaintiff and then another chunk of the land was mortgaged with Paramjit Singh, another son of the plaintiff and third chunk of land was mortgaged with Malinder Kaur, wife of the plaintiff. It goes to show that the plaintiff had been advancing money to the defendant and documents were got executed. Therefore, the lower court rightly held that it is a loan transaction. Had it been a genuine case of agreement to sell, then unless and until the entire sale consideration is paid, the defendant would not have executed special power of attorney in favour of the plaintiff authorizing him to execute the sale deed. Further, the said power of attorney remained in operation for little more than three years. Since, Paramjit Singh and Malinder Kaur, son and wife of the plaintiff respectively refused to redeem the mortgaged land, the defendant had also filed a civil suit against them for seeking redemption of the mortgage.

Learned counsel for the appellant states that the said suit as well as appeal has been dismissed and the mortgage has not been redeemed.

From the abovenoted facts, it comes out that the courts below rightly concluded that it was loan transaction and not a genuine case of agreement to sell.

It is also to be seen that the plaintiff had never appeared before the Registering Authority on any date for getting the sale deed executed.

Learned counsel for the appellant has further contended that issues No.1, 5 and 6 were taken together but no specific findings have been recorded on issue No.5 i.e. whether the alleged agreement is forged and fabricated and result of fraud and misrepresentation.

A perusal of judgment of lower court shows that the lower court while discussing the alleged agreement, held that the agreement was executed but it was a case of loan transaction. It would follow that the agreement is held not to be forged and fabricated, even though, the lower court has not used the specific words in that respect. The fact is that the agreement was held to be genuine but it was held to be a loan transaction.

Learned counsel for the appellant has referred to the substantial question of law framed in grounds of the appeal.

I am of the view that when the facts of the said case are appreciated, the findings of the facts have been recorded by the courts below. No substantial question of law is involved in the present appeal. Otherwise also, I agree with the findings of both the courts below.

Hence, the present regular second appeal stands dismissed.

(KULDIP SINGH)
JUDGE

December 07, 2015
sarita