IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.14 of 2015 (O & M)
Date of Decision:07.01.2015

Dhan Prakash

....appellant

Versus

Naresh Kumar

.....respondent

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

1.Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Gaurav Jindal, Advocate
for the appellant

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ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiff was decreed qua recovery of ₹ 50,000/- as he was not held entitled to a decree for specific performance of the agreement to sell. Parties to the lis, being aggrieved, preferred two separate appeals. First appellate Court, vide judgement and decree dated 21.08.2014, dismissed the appeal preferred by the appellant-defendant i.e.Dhan Parkash, whereas the appeal preferred by the plaintiff was partly accepted as he was also held entitled to interest @ 9% per annum on a sum of ₹ 50,000/- from the date of execution of the agreement till realization. This is how, defendant is before this Court in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiff i.e. Naresh Kumar, he prayed for a decree for specific performance of the agreement to sell dated 28.05.2009, executed by defendant Dhan Parkash qua the suit property i.e.a plot measuring 60 square yards for a total sale consideration of ₹ 50,000/- the amount that was paid to the defendant at the time of execution of the agreement itself. By way of consequential relief, a decree for injunction was also claimed. It was averred that defendant had taken a loan of ₹ 50,000/- from the plaintiff that was to be returned on or before 28.09.2009. Further, defendant had also entered into an agreement to sell the suit property vide agreement to sell dated 28.05.2009. It was agreed between the parties that, in case, defendant defaults in returning the above said loan on or before 28.09.2009, then, the defendant would get a sale deed executed in favour of the plaintiff. And since, defendant failed to repay the loan till 28.09.2009, in terms of the agreement dated 28.05.2009, thus, the defendant was liable to get a sale deed executed in favour of the plaintiff. It was maintained that plaintiff appeared before the Sub-Registrar on 29.09.2009 along with the necessary funds to defray the requisite expenses as he had already paid the total sale consideration, but the defendant failed to appear and perform his part of the contract. So much so, defendant was even served with the legal notice dated 12.11.2009 vide registered AD as well as through UPC, but to no avail. Hence the suit.

In defence, it was pleaded, inter alia, that defendant had borrowed a sum of ₹ 50,000/- from the plaintiff pursuant to an agreement in question but the said amount was repaid by the defendant to the plaintiff on 25.09.2009 in presence of Hukam Chand son of Mukandi Lal and Rakam Singh Rana, both residents of Panipat. But plaintiff did not return the original agreement to the defendant on the pretext that the same was lost. Subsequently, plaintiff became dishonest and filed the present suit with a view to grab the property of the defendant. It was maintained that the agreement in question was got executed by the plaintiff only as a security for repayment of the amount and, thus, no agreement to sell was ever executed by the defendant. Particularly, when the market value of the suit property was around ₹ 8 lacs. That being so, there was no occasion for the defendant to have appeared before the Sub-Registrar on 29.09.2009, particularly, when he had repaid the loan and agreement in question stood cancelled. Accordingly, defendant prayed for dismissal of the suit.

Trial Court, on an analysis of the matter in issue and the evidence on record, found that apparently the agreement in question (Ex.P1) was executed with a condition that, in case, defendant fails to repay a sum of ₹ 50,000/-, that he had borrowed from the plaintiff, he would get a sale deed executed in favour of the plaintiff qua the suit property. Thus, intention of the parties while executing the document in question was only to secure the payment/loan advanced to the defendant. The document lacked intent to sell the suit property. Further, plaintiff (PW1) himself testified in his cross examination that the document in question was not an agreement to sell. And necessarily, the same was executed only to secure the repayment of the loan. That being so, it was concluded that the plaintiff was not entitled to a decree for possession by way of specific performance of agreement to sell. As regards the stand of the defendant that he had repaid the loan of ₹ 50,000/- to the plaintiff, the same remained unsubstantiated as defendant failed to lead any evidence to prove the repayment. Therefore, a decree for recovery of ₹ 50,000/- was passed in favour of the plaintiff.

First appellate Court, reviewed the matter in issue, evidence on record and on an analysis thereof found itself in concurrence with the view drawn by the trial Court and the findings recorded in support thereof. As indicated above, appeal preferred by the appellant-defendant was dismissed. And the decree passed in favour of the plaintiff was modified only to the extent that he was also held entitled to interest @ 9 % per annum on the decretal amount.

I have heard learned counsel for the appellant and perused the RSA paper book.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the Courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Needless to assert, the stand put forth by the defendant was that he never executed any agreement to sell. In fact, he had merely borrowed a sum of ₹ 50,000/- from the plaintiff pursuant to the agreement in question dated 28.05.2009 (Ex.P1) and the document was executed merely to secure the amount that was lent. And defendant having repaid the borrowed amount on 25.05.2009 the agreement stood cancelled. Needless to assert, for defendant to succeed, he was required to prove that he indeed had repaid a sum of ₹ 50,000/- to the plaintiff. Both the Courts have concurrently found that the defendant failed to lead any evidence to prove the repayment of borrowed amount. As observed by the first appellate court, that had the defendant actually repaid the loan, there would have been endorsements on the original agreement in this regard and also as regards the cancellation thereof. In any case, defendant would have obtained the original agreement from the plaintiff. Defendant claimed to have repaid the borrowed amount in presence of Hukam Chand son of Mukandi Lal and Rakam Singh Rana. However, Hukam Chand died after he tendered his affidavit Ex.PW2/A and, thus, could not be cross examined. The other witness i.e. Rakam Singh Rana son of Zile Singh was not produced by the defendant. In the absence of any evidence, least cogent, the necessary and inevitable conclusion, was that defendant never repaid the borrowed amount.

Learned counsel for the appellant was unable to point out as to how the findings that were concurrently 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 set out above there hardly exists any ground, least plausible to interfere with decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

07.01.2015 **(ARUN PALLI)**
neenu **JUDGE**