

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.2011 of 2015 (O&M)

Date of Decision: September 21, 2015

Puran Singh

...Appellant

Versus

Tasvir Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.A.D.S.Jattana, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

CM No.5270-C of 2015

For the reasons mentioned in the application, which is supported by an affidavit, delay of 31 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.2011 of 2015

The challenge in the present Regular Second Appeal is to the concurrent findings rendered by both the Courts below, whereby the suit for specific performance of agreement to sell dated 10.6.2005 with regard to the land measuring 82 kanals 15 marlas, has been decreed by both the Courts below.

Mr.ADS Jattana, learned counsel appearing for the appellant-defendant submits that the agreement to sell in question does not prescribe any independent receipt with regard to payment of ₹9,00,000/- stated to have been received by way of earnest money. In essence, it was a mortgage deed, which was specifically pleaded in the written statement. The respondent-plaintiff was not ready and willing to perform his part of the contract and in lieu thereof, a suit was filed seeking cancellation of the agreement. Though the attesting witnesses of the agreement to sell have been examined, but the Numberdar, who is stated to have accompanied the appellant, has not been denied by the respondent-plaintiff stated otherwise and, thus, both the Courts below have committed an illegality and perversity in decreeing the suit.

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

During the course of arguments, I have come across the agreement to sell, whereby it is reflected that a sum of ₹9,00,000/- had been received by the appellant-defendant at the time of execution of the agreement to sell. In essence, the agreement to sell itself is an intention to sell and entail the element of sale. The suit filed by the appellant seeking cancellation of the agreement was dismissed and attained finality as having not been assailed in higher court.

The agreement to sell has been proved through the testimony of both the witnesses. Even the respondent-plaintiff has proved the readiness and willingness by producing on record the evidence, vis-a-vis the preparedness/in possession of the balance sale consideration. Before filing

the suit, a legal notice dated 7.6.2006 was sent, but the same was not replied. The alleged story coined for the first time in the written statement, i.e., afterthought. The language of the agreement to sell does not even whisper with regard to any intention of the parties in settling their hands for mortgaging the property in dispute.

I do not find any illegality and perversity in the findings rendered by both the Courts below, which have been rendered after appreciating the oral and documentary evidence. Thus, no substantial question of law arises for determination by this Court.

The appeal is accordingly dismissed.

September 21, 2015
ramesh

(AMIT RAWAL)
JUDGE