**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

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Regular Second Appeal No.2580 of 2015 (O&M)
Date of Decision: September 29, 2015

Dalip Kaur

...Appellant

Versus

Mohd. Salim

...Respondent

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. Sherry K. Singla, Advocate
for the appellant.

**AUGUSTINE GEORGE MASIH, J. (ORAL)**

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Malerkotla, dated 10.01.2012 by which the suit for possession by way of specific performance of an agreement to sell dated 19.05.2003 and writings dated 20.05.2005 and 20.05.2006 of land measuring 2 bighas 12 biswas 16 biswasis being 1/16 share out of the land measuring 42 bighas 5 biswas, the details of the property are further mentioned in the head note of the suit along with share in motor, bore, kotha, pipe, pakha, khal, banna and along with all other rights appurtenant to the above said land situated at village Adampal, Tehsil Malerkotla, District Sangrur, for a total consideration of ₹1,45,200/- after deducting the amount of ₹1,20,000/- paid as earnest money by the respondent-plaintiff to the appellant-defendant on payment of balance consideration, has been decreed, against which the appeal preferred by the appellant-defendant stands dismissed by the Additional District Judge, Sangrur, on 13.01.2015.

2. It is the contention of learned counsel for the appellant-

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defendant that the learned Lower Appellate Court has wrongly dismissed the application of the appellant-defendant under Order 41 Rule 27 CPC for leading additional evidence by placing on record the plaint of the suit No.733 of 02.11.2006 decided on 24.07.2007 which was filed by the respondent-plaintiff against the appellant-defendant for injunction, which has been withdrawn without permission to file a fresh one on the same cause of action or in accordance with law and, therefore, the said order is not sustainable. His further contention is that this document was essential as a plea has been taken in the written statement that the suit was not maintainable as per the provisions contained in Order 2 Rule 2 CPC. His submission is that the agreement to sell is dated 19.05.2003 and the date of execution of the sale deed was fixed as 20.05.2005 which has been extended upto 20.05.2006 and thereafter upto 20.05.2007 on the basis of endorsement, which cannot be said to be above board, rather it smells of suspicion because it is asserted that an amount of ₹1,00,000/- was initially paid on 19.05.2003 and ₹20,000/- was paid on 20.05.2005 and when the substantial amount has been paid, merely for an amount of ₹25,200/-, there was no reason for delaying the execution of the sale deed by further two years thereafter. He asserts that the scribe has not been produced and, therefore, the agreement cannot be said to have been duly executed and proved by the respondent-plaintiff and thus, reliance cannot be placed upon the same. He, on this basis contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

3. I have considered the submissions made by the counsel for the appellant-defendant and have gone through the judgments passed by the Courts below with his assistance.

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4. A perusal of the judgment passed by the Additional District Judge, Sangrur, dated 13.01.2015, where an application under Order 41 Rule 27 CPC moved by the appellant-defendant has been dismissed and on consideration thereof, I do not find any illegality in the same as it has been rightly observed that there was no impediment which constrained the appellant-defendant from placing on record the copy of the plaint of suit No.733 of 02.11.2006, which admittedly was filed by the respondent-plaintiff against the appellant-defendant and had been withdrawn on 24.07.2007 at this belated stage when the appeal was pending. The findings further on the issue with regard to applicability of Order 2 Rule 2 CPC relying upon the judgment of the Supreme Court passed in case titled as *Virgo Industries (Eng.) Private Limited Versus Venturetech Solutions Private Limited 2012 (4) RCR (Civil) 372* is fully applicable to the case in hand and do not call for any interference. The judgment of the Supreme Court in case titled as *Rathnavathi and another Versus Kavita Ganashamdas 2014 (6) R.A.J. 140* is also rightly relied upon.

5. The contention of learned counsel for the appellant-defendant with regard to the non-production of the scribe of the agreement to sell by the respondent-plaintiff would not in itself be fetal as in the present case, the plaintiff has been able to prove the said agreement to sell on the basis of his own statement as also the statements of two attesting witnesses, who have stated categorically that the agreement was read over to them in their presence as also in the presence of the appellant-defendant and thereafter the thumb impression was put by the appellant-defendant. They have also stated that the amount of ₹1,00,000/- was paid to the appellant-defendant at the time when the agreement to sell was executed on 19.05.2003. Same is

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the position with regard to the subsequent writings/endorsements with regard to the extension of time for execution of the sale deed. The Courts below have rightly given the findings on this issue taking into consideration the pleadings and the evidence which has been led by the parties.

6. Both the Courts below have returned concurrent findings in detail after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

7. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

8. In the light of the dismissal of the appeal itself, the application for stay i.e. CM No.6664-C of 2015, also stands disposed of as infructuous.

**September 29, 2015** **(AUGUSTINE GEORGE MASIH)**
*Puneet* **JUDGE**

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