

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 2768 of 2015(O&M)
Date of decision : September 1, 2015

Harbhajan Lal (deceased) through L.Rs

..... Appellant

Versus

Om Parkash

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr. Anil Chawla, Advocate
for the appellant.**

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 to the impugned order dated 14.8.2014 passed by the lower appellate court whereby the judgment and decree, decreeing the suit for possession by way of specific performance of the agreement to sell dated 19.6.2002 passed in favour of the appellant-plaintiff has been set aside.

Learned counsel for the appellant-plaintiff submits that the lower appellate court has committed illegality and perversity in setting aside the well reasoned judgment and decree of the trial court whereby the suit for specific performance of the agreement to

sell had been decreed. He further submits that on 19.6.2002 the respondent-defendant had purchased the house in dispute from the appellant-plaintiff and on the same date entered into an agreement to sell selling the same very house to the appellant-plaintiff . The target date for registration and execution of the sale deed was 19.6.2004 and since the respondent-defendant did not perform his part of the agreement, the suit was accordingly filed on 22.7.2004. Thus, submits that the appeal involves substantial question of law:

“Whether the agreement to sell containing certain conditions was good in law or not ?”

He submits that the lower appellate court has misread the contents of the agreement to sell in allowing the appeal.

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

It is a well settled law that the appellant-plaintiff in order to prove the averments in the plaint has to stand on his own legs and not on the weaknesses in the defence of the respondent-defendant. The appellant-plaintiff has not been able to give explanation as to how and under what circumstances Om Parkash who has purchased the house from the appellant-plaintiff vide registered sale deed dated 19.6.2002 agreed to sell the same on the same date after taking a sum of ₹1 lac and put a condition in the agreement that if ₹1 lac is not returned within a period of two years the respondent-defendant would execute and register the sale deed.

The trial court though, had decreed the suit, but in my view, has mis-directed in not reading the cross examination and

candid admission of the appellant-plaintiff who unequivocally admitted that no agreement to sell dated 19.6.2002 was entered into.

It would be apt to extract the relevant portion of the cross-examination.

“It is correct that Om Parkash took the possession of the house. I do not know whether the said house already been sold by Om Parkash to some one else. Harbhjan Lal again said Om Parkash did not execute any agreement to sell for sale of house in my favour.”

The lower appellate court while noticing the aforementioned admission has dismissed the suit while reversing the decree on the premise that once the appellant-plaintiff has denied the execution of the agreement to sell, he could not rely upon the pieces of evidence, much less which has surfaced in the defence of the respondent-defendant. Even the Lambardar-PW-4 admitted in the cross-examination that no consideration was passed in his presence. Thus, the agreement to sell could not be said to be an agreement to sell, if it was without any consideration.

The submission that the respondent-defendant did not step into the witness box would not fatal the case. It would be the appellant-plaintiff who has to discharge the onus as per Section 101 of the Indian Evidence Act, 1872.

There is no illegality or perversity in the aforementioned judgment and decree of the lower appellate court

which warrants interference, much less no substantial question of law arise for determination by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 1 , 2015
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