

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 3181 of 2015 (O&M)

Date of decision : July 09, 2015

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Kartar Singh

.....Appellant

Versus

Budh Singh since deceased through L.Rs and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Ashwani Gaur, Advocate for the appellant.

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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?*

RITU BAHRI, J

C.M No. 7656-C of 2015

C.M is allowed as prayed for.

Legal Representatives of respondent no.1, Budh Singh (deceased) as mentioned in the application are taken on record and allowed to be impleaded as respondents.

RSA No. 3181 of 2015

The appellant-defendant (hereinafter referred to as 'the defendant') has come up in this regular second appeal against the judgment dated 26.9.2013 passed by the Civil Judge (Senior Division) Sonapat, whereby the suit of the plaintiffs-respondents (hereinafter referred to as 'the plaintiffs') for specific performance of

the agreement to sell dated 23.3.2007 was decreed and the judgment dated 6.4.2015 passed by the Additional District Judge, Sonapat vide which the appeal against the judgment of the trial Court was dismissed.

Brief facts of the case are that the defendant entered into an agreement with the plaintiffs to sell his agricultural land measuring 18 kanals 2 marla situated within the revenue estate of village Nirthag, Tehsil Kharkhoda, District Sonapat for a total sales consideration of Rs.8,50,000/-. Out of the total sale consideration, defendant received a sum of Rs.8 lacs in cash as earnest money and executed an agreement and a valid receipt on the same date i.e. 23.3.2007. As per the terms and conditions of the agreement, defendant agreed to execute and get registered a sale deed in favour of the plaintiffs on or before 27.6.2007 after receiving the balance sale consideration. Possession of the suit land was already with plaintiff no.1 and his brother Mahender and Hawa Singh. On 27.6.2007, plaintiffs remained present in the office of Sub Registrar, Kharkhoda along with balance sale consideration as well as stamp and registration expenses but defendant did not turn up to execute the sale deed and the plaintiffs got their presence marked before the Sub Registrar vide their separate affidavits. Hence the suit was filed.

On notice, the defendant took the stand that he never executed the alleged agreement to sell dated 23.3.2007. He further pleaded that he never received even a single rupee from the plaintiffs regarding the sale of the disputed land. The property in dispute had

been allotted by the Haryana Government in favour of defendant in the year 1979 and in view of the said allotment a mutation has been sanctioned in favour of the defendant by the revenue Department. The possession of the suit property had been taken illegally and forcibly by the plaintiffs in July 2006 and the cost of the land is about 30 lacs. The plaintiffs had mentioned the cost of the land at Rs.8,50,000/-. The plaintiffs had fabricated a false and baseless story by preparing forged documents of agreement to sell and receipt dated 23.3.2007.

The trial Court after appreciating the rival contentions came to the conclusion that plaintiffs have proved the due execution of the agreement dated 23.3.2007 and receipt dated 23.3.2007 and accordingly decreed the suit of the plaintiffs vide judgment and decree dated 26.9.2013.

Plaintiffs had duly proved execution of agreement to sell Ex. P-1 and the receipt Ex. P-2 by examining attesting witness to the same. Testimony of PW-3 V.B Kashyap, Handwriting and Finger Prints Expert negated the plea of fraud taken by defendant. As per his report Ex. PW-3/B, disputed thumb impressions on the agreement and the receipt were found to be identical with specimen and admitted thumb impression of defendant Kartar Singh. The Lower Appellate Court further examined the question of readiness and willingness on the part of the plaintiffs. The plaintiffs after executing the agreement appeared before the Sub Registrar, Kharkhoda on the appointed date i.e 27.6.2007 and got their

presence marked before the Sub-Registrar vide their affidavits Ex. P-5 and Ex.P-6. The plaintiffs also got a registered notice dated 9.7.2007 served upon the defendant vide Ex. P-7. Hence their presence in the Sub-Registrar office and legal notice were sufficient to prove that they were always ready to execute the agreement in question.

The argument of the counsel for the appellant-defendant that the agreement in question was result of fraud and misrepresentation has been rightly rejected by the appellate Court in the light of the judgment passed by Hon'ble the Supreme Court in **Union of India vs. M/s Chatur Bhai M. Patel, 1976 Cr. L.J. 164**, wherein it has been held that plea of fraud whether made in civil or criminal proceedings must be established beyond reasonable doubt like any other charge of an offence.

Argument of the learned counsel for the appellant that the appellant could not execute the agreement to sell dated 23.3.2007 as he was present in his office was also rejected by the appellate Court. As per the testimony of DW-1/Ashok Kumar Clerk, Municipal Committee, Sonapat, he deposed that attendance of defendant Kartar Singh is marked for 23.3.2007 in their office as per attendance register. But DW-1 in his cross-examination admitted that defendant Kartar Singh is sweeper and sweepers do not mark their attendance themselves rather Inspector marks their attendance. DW-1 has also admitted that sweepers perform their duties in field and there are 31 wards in Sonapat Municipal Committee and further admitted that as

per register he cannot tell as to in which ward defendant had been deputed meaning thereby that the defendant being sweeper in Municipal Committee at the relevant time was supposed to perform his duty in the field and in these circumstances it cannot be inferred that the defendant could not have executed agreement to sell dated 23.3.2007 and the receipt of even date when his presence was marked in his office by the concerned Inspector of the Committee. Thus, this argument of the counsel for the appellant was rightly rejected by the appellate Court.

The dispute in the present case is of plot of 100 square yards which was allotted to the appellant-defendant by the Haryana Government in the year 1979. The trial Court and appellate Court have rightly decreed the suit of the specific performance as the execution of the agreement has been duly proved. Judgments passed by both the Courts below do not suffer from any infirmity and misreading of evidence and hence do not require any interference.

In view of all that has been discussed above, no substantial question of law arises for consideration in this regular second appeal. Hence the same is dismissed.

July 09, 2015
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(RITU BAHRI)
JUDGE