

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.3425 of 2015 (O & M)

Date of Decision: December 08, 2015

Nirmal Singh

..... APPELLANT

VERSUS

Harbhajan Singh

..... RESPONDENTS

...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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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?

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PRESENT: - Mr. Deepak Verma, Advocate, for the appellant.

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Jaspal Singh, J

1. The instant appeal has been preferred by defendant – Nirmal Singh, challenging judgment and decree dated May 31, 2012 passed by the trial court as well as judgment & decree dated January 16, 2015 passed by the lower appellate court whereby the findings recorded by the trial court have been upheld and appeal filed by the defendant against the judgment & decree passed by the trial court has been dismissed. Accordingly, the suit filed by plaintiff for specific performance of agreement to sell dated May 30, 2005, in respect of property as detailed in head note of the plaint, by directing the defendant to execute sale deed, and further, to put the plaintiff in possession of the suit property, has been dismissed.

2. While assailing the findings returned by the trial court on all the issues and affirmed by the lower appellate court, it has been ebulliently argued by learned counsel for the appellant - defendant that same are against the evidence available on file and settled canons of law. Mis-appreciation of evidence adduced by the plaintiff has resulted into mis-carriage of justice. Infact, neither defendant entered into any agreement to sell with plaintiff on May 30, 2005 for sale consideration of ₹ 1,30,000/- nor he agreed to execute sale deed on June 30, 2005. He has not sold any malba standing in the suit property. Plaintiff is running a business of money lender and appellant – defendant had borrowed a sum of ₹ 20,000/- from plaintiff on interest @ 2% in the money of May 2005. At that time, plaintiff had obtained his signatures/thumb impression on some blank papers with promise that plaintiff will return those documents whenever defendant returns the borrowed amount with interest. Defendant had returned ₹ 17,000/- to the plaintiff but he did not issue any receipt. Moreover, defendant repaid the entire amount but plaintiff started demanding ₹ 13,000/- more. Before execution of agreement to sell, defendant had orally sold the malba standing in the suit land, as shown in red colour in site plan, and the malba standing in the site of Government as shown in yellow colour in site plan, for an amount of ₹ 6,000/- to plaintiff. The document, on which the plaintiff has relied upon, is not stamped. All these facts have been ignored by the courts below. As such, impugned judgments & decrees are not in consonance with the legal proposition of law.

3. This Court has given an anxious thought to the submissions made by learned counsel for the appellant and scrutinized the record.

4. Though, appellant – defendant has admitted his signatures

20,000/- on interest from the plaintiff. In order to prove the valid execution of agreement to sell, plaintiff examined marginal witness Surinder Puri as PW-2, who deposed the entire facts with regard to execution of agreement by the appellant – defendant in favour of respondent – plaintiff, besides description of property; receipt of earnest money; and date for execution of sale deed. Moreover, plaintiff while appearing in the witness box as PW-1 has reiterated the facts as pleaded in the plaint. The consistent testimony of both these witnesses on all the material aspects of the case is sufficient to prove that agreement to sell Ex.P2 was validly executed. As per the case of the appellant – defendant, he had repaid a sum of ₹ 17,000/- to the plaintiff in the presence of one Parminder Singh Sehmi. But, to the utter surprise, aforesaid Parminder Singh Sehmi has not been examined by him. Even, no receipt with regard to payment of aforesaid amount of ₹ 17,000/- has been proved nor any other evidence has been led to the effect that he had paid any such amount to respondent – plaintiff. Thus, the oral evidence coupled with documentary evidence has to be given weightage, which is sufficient to discard the oral evidence led by the appellant. So, the courts below have rightly held that respondent – plaintiff has proved the due execution of agreement to sell.

5. As far as sale of malba lying in the suit property prior to execution of agreement to sell and its non-mentioning in the same, is concerned, this transaction is entirely different from the agreement to sell and its non-mentioning in the agreement to sell does not effect merits of the case.

6. In the light of what has been discussed above, there is no infirmity, illegality and impropriety in the findings returned by the courts

courts are upheld. Accordingly, the appeal is dismissed. However, the parties are left to bear their own costs.

December 08, 2015
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(Jaspal Singh)
Judge