

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

**RSA NO. 473 OF 2015 (O&M)
DECIDED ON : 06.05.2015**

Gurnam Singh

...Appellant

versus

Bhupinder Singh

...Respondent

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Dinesh Nagar, Advocate.

K. C. PURI, J. (ORAL)

This is an appeal directed by the defendant/appellant against the judgment and decree dated 09.12.2014 passed by Shri Harjinder Pal Singh, Additional District Judge, Jalandhar, vide which the appeal preferred by the defendant/appellant against the judgment and decree dated 06.02.2012 passed by Shri Ravinderjit Singh Bajwa, Civil Judge (Junior Division), Nakodar, was dismissed.

Briefly stated, Bhupinder Singh filed a suit for possession by way of specific performance of Agreement to Sell dated 21.07.2003 in respect of property mentioned in the head note of the plaint.

The case of plaintiff put forth before the trial court is that defendant is owner of the land measuring 7 kanals 19 marlas

as fully described in the head note of the plaint. The defendant entered into agreement to sell the said property @ ₹3,50,000/- per acre and received a sum of ₹2,50,000/- as earnest money on the date of execution of the agreement to sell dated 21.07.2003. The defendant agreed to get the sale deed executed in favour of plaintiff on or before 21.01.2004. It was mentioned in the Agreement that in case the plaintiff resiles from the terms and conditions of the agreement to sell, then his earnest money will be forfeited and in case the defendant resiles from the terms and conditions of the agreement, then he would be liable to pay the double of the amount of earnest money i.e ₹5,00,000/- as damages to the plaintiff. The plaintiff would also be entitled to get the sale deed executed in his favour through the intervention of court. It was further pleaded that on 21.01.2004, the plaintiff remained present before the office of Sub Registrar, Shahkot to get the sale deed registered in his favour and along with balance amount but the defendant fails to come present to perform his part of contract. It is further submitted that the plaintiff is ready and willing to perform his part of contract. Hence, the suit was filed.

Upon put to notice, the defendant appeared and filed written statement taking preliminary objections that the suit is not maintainable; that the plaintiff has concealed material facts from the court; that plaintiff has no locus standi to file the suit; that the suit is not properly valued for the purpose of court fee

and jurisdiction; that defendant never executed any agreement to sell in favour of the plaintiff.

On merits, the ownership of defendant was admitted but he has denied the execution of agreement to sell in favour of plaintiff on 21.07.2003. It was further pleaded that the defendant has taken a loan of ₹2,00,000/- on interest. The plaintiff had obtained his signatures on blank papers on 21.01.2003 as security for repayment of the loan amount. The defendant has repaid the entire amount with interest in the presence of Gurmej Singh of village Adraman. The plaintiff has returned the papers along with jamabandi and endorsed on the back of the agreement to sell. It is mentioned in the said endorsement that ₹60,000/- has been received. Gurmej Singh and Charan Singh had attested the said endorsement. The plaintiff has concealed the material facts.

Replication was filed.

From the pleadings of the parties, following issues were framed :-

- 1) Whether plaintiff is entitled for possession by way of specific performance of the agreement to sell dated 21.07.2003 executed by defendant in favour of the plaintiff in respect of the property in question? OPP
- 2) If above issue is proved, whether the alleged agreement to sell dated 21.07.2003 is result of fraud, misrepresentation and without consideration ? OPD

- 3) Whether in the alternative the plaintiff is entitled for the recovery of ₹3,50,000/- as prayed for ?
OPP
- 4) Whether plaintiff has not come to the court with clean hands ? OPD
- 5) Whether the suit is not maintainable ? OPD
- 6) Whether the plaintiff has no cause of action and locus standi to file the present suit ? OPD
- 7) Relief.

In order to prove his case, the plaintiff himself appeared as PW-1 and examined Krishan Kant as PW-2, Balkar Singh as PW-3, Sukhjiwan Singh as PW-4, Amarjit Singh as PW-5 and closed the evidence after tendering certain documents.

On the other hand, Gurmej Singh himself stepped into the witness box as DW-1 and examined Charan Singh as DW-2, Harjinder Kaur as DW-3 and closed the evidence.

The learned trial court after appreciating the evidence, regarding Issue No.1 held that agreement was executed but it was a money transaction. Issues No.2 to 6 were decided against the defendant. Consequently, the suit of the plaintiff was decreed for recovery of ₹2,50,000/- along with interest @ 6% per annum from the date of execution of agreement till its realisation.

Feeling dissatisfied with the above said judgment and decree dated 06.02.2012 passed by Shri Ravinderjit Singh Bajwa,

Civil Judge (Junior Division), Nakodar, defendant/appellant preferred appeal before the first Appellate Court. The said appeal was dismissed, vide judgment and decree dated 09.12.2014 passed by Shri Harjinder Pal Singh, Additional District Judge Jalandhar.

Still feeling aggrieved with the above said judgment and decree dated 06.02.2012 passed by Civil Judge (Junior Division), Nakodar and judgment and decree dated 09.12.2014 passed by Additional District Judge, Jalandhar, the defendant/appellant has preferred the present regular second appeal.

Learned counsel for the appellant, in para no.10 of the grounds of appeal has mentioned that following questions of law have arisen in the present appeal :-

- 1) Whether the judgment and decree passed by both the courts below are legal and justified ?
- 2) Whether the suit of the plaintiff-appellant deserves to be dismissed in toto with costs ?
- 3) Whether learned courts below misread and misappreciated endorsement Ex.D2 in prejudice to defendant case ?

Learned counsel for the appellant has submitted that judgments of both the courts below are the result of misreading or misinterpreting the evidence on file. The plaintiff has suppressed the earlier agreement. Even both the courts below have given the finding that there was money transaction between

the parties. An amount of ₹2,00,000/- advanced by the plaintiff to defendant has already been returned. So, judgments and decrees of both the courts below are perverse.

I have given my thoughtful consideration to the submissions made by learned counsel for the appellant but do not find any force in the same.

The case of the defendant/appellant is that he has returned the money, but has failed to substantiate the said signatures. It is settled law that second appeal lies only when there is any substantial question of law involved. There is nothing on file that judgments of both the courts below are the result of misreading and misinterpreting the evidence on file.

No doubt previous agreement was cancelled but execution of the agreement in question stands proved. Learned counsel for the appellant has failed to convince this court as to how second agreement came into existence. So, I have no hesitation in holding that no substantial question of law has arisen in the appeal.

So, in view of the above, the appeal is without any merit and the same stands dismissed.

MAY 06, 2015
shalini

(K. C. PURI)
JUDGE