

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

234

RSA No.204 of 2014

Decided on : 30.10.2015

Brijpal Singh

... Appellant

Versus

Surja Ram

.. Respondent

CORAM : HON'BLE MR.JUSTICE MR AMIT RAWAL

Present : Mr.Piyush Aggarwal, Advocate for
Mr.Saurabh Garg, Advocate
for the appellant.

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Amit Rawal, J. (Oral)

The appellant-defendant is in Regular Second Appeal against the judgment and decree dated 20.03.2013 passed by the lower appellate court whereby suit filed by the respondent/plaintiff seeking specific performance of an agreement to sell dated 22.12.2003 has been decreed, in sense the judgment and decree of the trial court has been set aside.

Mr. Aggarwal, learned counsel appearing on behalf of the appellant, submits that pursuant to the agreement to sell in respect of land measuring 242 sq. yds, only the earnest money of Rs.70,000/- against the total consideration of Rs.1,10,000/- was paid. The readiness and willingness to perform the contract on the part of the

respondent-plaintiff is conspicuously absent, inasmuch as, it has nowhere come on record that the plaintiff ever paid the entire sale consideration or was even willing to pay the same. As such, the plaintiff is not entitled to any discretionary relief under Section 20 of the Specific Relief Act. It is, thus, argued that the lower appellate court has committed a gross illegality while reversing the well reasoned judgment and decree passed by the trial Court.

Learned counsel for the appellant further submits that the trial court on the basis of evidence found that there was interpolation in the agreement and, therefore, declined the discretionary relief of specific performance to the plaintiff.

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

Taking into consideration the last plea with regard to interpolation in the rate of the property, it is apparent from the record that the same has been duly signed by the defendant/appellant, thus, plea taken by the appellant of interpolation in the agreement pales insignificant. Moreover, no effort was made to examine the said document from any expert.

As regards the readiness and willingness to perform the agreement by the appellant, the targeted date for execution and registration of the sale deed was initially fixed as 30.04.2004 and extended to 28.01.2008 and in between a legal notice was also sent, but the appellant-defendant did not come forward to execute the sale deed which necessitated the plaintiff to file the suit on 28.05.2004.

The notice having been received with the remarks “unclaimed” amounts to refusal as it is deemed to have been sent in law as per the provisions of Section 27 of the General Clauses Act.

The plea, that as per agreement to sell, the property was agreed to be sold, at the rate of Rs.2,000/- per square yard is repelled as it has nowhere been supported by any evidence on record, the learned appellate court rightly did not take the same into consideration and stuck to terms and conditions of the agreement to sell dated 22.12.2003 and thereby exercised discretion to seek the specific performance thereof, on payment of balance sale consideration, accepting the earnest money of Rs.70,000/-

I do not find any illegality and perversity in the findings recorded by lower appellate court which are based on appreciation of oral and documentary evidence, much less, no substantial question of law arises to be adjudicated by this Court.

Accordingly, there is no merit in the appeal and the same is hereby dismissed.

[Amit Rawal]
Judge

30.10.2015
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