

In the High Court of Punjab and Haryana at Chandigarh

.....

CM No.6786-C of 2014
and
R.S.A. No.2855 of 2014 (O&M)

.....

Date of decision:24.7.2015

Krishan Kumar and another

.....Appellants

v.

Ram Parkash

.....Respondent

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Munish Puri, Advocate for the appellants.

.....

Inderjit Singh, J.

CM No.6786-C of 2014:

For the reasons mentioned in the civil miscellaneous application, the delay of 25 days in re-filing the appeal is condoned.

The civil miscellaneous application stands disposed of.

R.S.A. No.2855 of 2014 (O&M):

This regular second appeal has been filed by Krishan Kumar and Nirmal Rai-appellants/defendants against Ram Parkash-respondent/plaintiff challenging the impugned judgment and decree dated 3.9.2013 passed by the learned Additional District Judge, Pathankot, vide which the appeal filed by the appellants-defendants against the impugned judgment and decree dated 31.3.2011 passed by learned Civil Judge (Junior Division),

Pathankot, decreeing the suit of the plaintiff, has been dismissed.

The brief facts of the case are that Ram Parkash-plaintiff filed suit for possession by way of specific performance of the agreement dated 7.5.2003, by which the defendants agreed to sell their land measuring 15½ Marlas as fully described in the head note of the plaint. It is stated in the plaint that defendant No.1 is owner of the property. He entered into agreement to sell the suit property on 7.5.2003 for a consideration of ₹9,76,500/- and received ₹1 Lac towards earnest money. An agreement was executed by defendant No.1 on his own behalf as well as on behalf of defendant No.2 being his attorney. The attorney is duly registered in the office of Sub Registrar, Pathankot. The sale deed was to be executed on 7.7.2003. The plaintiff came present in the office of Sub Registrar along with the balance sale consideration, but defendant No.1 did not turn up. The date for execution of the sale deed was then extended to 11.8.2003 and a writing was executed on the overleaf of the first page. The plaintiff after intimating defendant No.1 again went to the office on 11.8.2003 along with the remaining sale consideration but defendant No.1 did not turn up.

On the other hand, the case of defendant No.1 is that he needed ₹1 Lac in connection with his business for which he talked with the plaintiff and the plaintiff advanced a loan of ₹1 Lac to him. The plaintiff obtained the signatures of defendant No.1 at 3-4 places on the blank papers and defendant No.1 also wrote in his hand of his having received ₹1 Lac only. The plaintiff obtained the signatures of defendant No.1 on blank stamp papers in good faith with the assurance that the plaintiff will keep the same

as security and he further undertook to return the same to defendant No.1 in the same very condition. It is also the case of defendant No.1 that the plaintiff has fabricated the alleged agreement by misusing the blank papers.

Plaintiff Ram Parkash has himself stepped into the witness box as PW-1 and further examined Subhash Kumar as PW-2, Sudershan Kumar as PW-3 and tendered into evidence the documents.

On the other hand, defendant No.1 has appeared himself as DW-1 and closed the evidence.

After framing the issues and after the parties led evidence, the learned Civil Judge (Junior Division), Pathankot, decreed the suit of the plaintiff vide judgment and decree dated 31.3.2011. Aggrieved from this judgment and decree, defendant No.1 filed appeal before the learned District Judge, Pathankot, which was dismissed vide judgment and decree dated 3.9.2013 by learned Additional District Judge, Pathankot. Aggrieved from these judgments and decrees passed by the Courts below, this regular second appeal has been filed by the appellants-defendants.

At the time of arguments, learned counsel for the appellants argued that the signatures were obtained on blank papers and the agreement has been fabricated by the plaintiff. He argued that the evidence has not been perused in right perspective and the judgments and decrees passed by the Courts below are liable to be aside.

I have heard learned counsel for the appellants and have gone through the record.

From the record, I find that the defendants indirectly have

admitted the signatures of defendant No.1 on the agreement by stating that 3-4 signatures were obtained on blank papers. The defendant No.1 has admitted the receipt of ₹1 Lac which the plaintiff says the amount was of earnest money whereas the case of defendant No.1 is that he borrowed ₹1 Lac. Defendant No.1 has also admitted that it was got written by the plaintiff regarding receiving of ₹1 Lac from defendant No.1 in his own hand writing. The plaintiff has also proved the copy of the power of attorney on behalf of defendant No.2 in favour of defendant No.1. The plaintiff has also led the cogent evidence to show that he remained ready and willing and is still ready and willing to perform his part of the contract. The plaintiff has proved the agreement to sell by bringing witnesses and by appearing himself into the witness box and the oral statements of the PWs including the attesting witness of the agreement Subhash Kumar and the witness to the endorsement extending the date for execution of the sale deed. Registration Clerk was also examined to prove the power of attorney executed by defendant No.2 in favour of defendant No.1. The statements of these PWs have been duly supported and corroborated by documentary evidence.

On the other hand, there is mere denial of the defendants.

Both the Courts below have correctly appreciated the evidence in right perspective. Therefore, the findings given by the Courts below are correct, as per evidence and law and same are concurrent. The findings cannot be held as perverse. Both the judgments and decrees passed by the Courts below are correct, as per evidence and law which do not require any interference from this Court and the same are upheld. No substantial

question of law arises in this regular second appeal.

Therefore, finding no merit in the regular second appeal, the same is dismissed.

July 24, 2015.

(Inderjit Singh)
Judge

hsp