

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 3048 of 2014(O&M)
Date of decision :February 26, 2015

Kamlesh Bansal

..... Appellant

Versus

Nachhattar Singh

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Amit Jain, Advocate
for the appellant.

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?

Amit Rawal, J (oral).

This Regular Second Appeal at the instance of the appellant-defendant is directed against the judgments and decrees of the courts below whereby the suit for specific performance of agreement to sell dated 16.11.2004 filed by the respondent-plaintiff has been decreed and the appeal filed against the same by the appellant-defendant has been dismissed.

The appellant-defendant has been called to execute the sale within a specific period on receipt of balance consideration failing which the respondent-plaintiff has been given liberty to execute through the process of the court.

Mr. Amit Jain, learned counsel appearing on behalf of the appellant-defendant in support of his grounds of appeal submits that both the courts have committed illegality and perversity in decreeing the suit and dismissing the appeal as the respondent-plaintiff failed to prove the readiness and willingness, much less alleged payment of ₹10 lacs paid at the time of execution of the agreement to sell. He further submits that the repeated extension of time seeking the registration of the sale deed showing that the respondent-plaintiff was not ready and willing and it was merely a loan transaction which has been converted into an agreement to sell. He further submits that one of the attesting witness Parmod Kumar though filed an affidavit in the examination-in-chief but thereafter did not appear in the cross examination.

I have heard learned counsel appearing on behalf of the appellant-defendant, appraised the impugned judgments and decrees of both the courts below with their able assistance and am of the view that the present appeal is devoid of merits and is liable to be dismissed for the following reasons.

It is a settled law that once the appellant-defendant denies the execution of the agreement to sell cannot be permitted to raise the plea of readiness and willingness on the part of the respondent-plaintiff. However in the instant case the respondent-plaintiff in order to prove the execution of the agreement to sell has examined other attested witness-PW-2 Malkit Singh who has proved the execution much less payment of the earnest money. The appellant-defendant failed to lead any evidence to belie the stand of

the respondent-plaintiff, much less prove the plea of forgery and fabrication. The best evidence for the appellant-defendant was to compare her signatures with the signatures available on the agreement to sell with the admitted signatures through examination of a hand writing expert. One of the extensions of time dated 31.1.2005 was also witnessed by none else but her husband Balraj Bansal. Even Balraj Bansal has not come in the witness box to dispute his signatures on the extension of time. The examination of other witnesses for cross examination could not fetter the requirement of the law that one of the attesting witnesses is required to appear. The appellant-defendant has not been able to cause any dent in the cross examination of the respondent-plaintiff as well as the attesting witness in support of their stand taken in the written statement.

In view of what has been observed above, the appeal is liable to be dismissed. Both the Courts below have rendered a finding of fact and law after appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 26 , 2015
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