

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.353 of 2014

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Date of decision:20.7.2015

Ajit Singh

.....Appellant

v.

Jarnail Singh

.....Respondent

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Satbir Rathore, Advocate for the appellant.

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Inderjit Singh, J.

This regular second appeal has been filed by Ajit Singh-appellant/plaintiff against Jarnail Singh-respondent/defendant challenging the impugned judgment and decree dated 16.9.2013 passed by the learned Additional District Judge, Hoshiarpur, vide which the appeal filed by the plaintiff against the impugned judgment and decree dated 2.2.2011 passed by the learned Civil Judge (Junior Division), Dasuya, dismissing the suit of the plaintiff, has been partly allowed and the suit of the plaintiff was partly decreed to the effect that he is entitled to alternative relief for recovery of amount of ₹2,50,000/- along with interest @12% per annum and future interest @6% per annum.

The brief facts of the case are that Ajit Singh filed suit against Jarnail Singh for specific performance of agreement to sell dated 21.1.2004 executed by the defendant in favour of the plaintiff of land measuring 24 Kanals out of total land measuring 60 Kanals 10 Marlas as fully described

in the head note of the plaint or in the alternative suit for recovery of ₹1.5 Lacs (₹2,50,000/- as earnest money and ₹2,50,000/- as damages) as per terms and conditions of agreement to sell dated 21.1.2004.

The case of the plaintiff is that the defendant had executed an agreement to sell dated 21.1.2004 in his favour in respect of land measuring 24 Kanals out of total land measuring 60 Kanals 10 Marlas and received ₹5 Lacs as earnest money. The agreement to sell got extended from 21.1.2006 to 21.1.2008. The defendant on 31.1.2006 received another amount of ₹1,00,000/- as earnest money from the plaintiff and endorsement to this effect was made by the deed writer on the reverse side of first leaf of agreement to sell. Thus, the defendant has received total amount of ₹2,50,000/- as earnest money. On the fixed date the defendant did not turn up. The plaintiff ultimately got his presence marked by way of an affidavit duly attested by the Executive Magistrate, Garhdiwala. The plaintiff was and always ready and willing to perform his part of the contract.

Upon notice, the defendant took the preliminary objection regarding the maintainability etc. It is also stated by the defendant that legality and validity of the alleged agreement to sell, is disputed. The alleged agreement to sell was written as a document of security of chronic borrowed amount. The plaintiff was not entitled to seek specific performance on the basis of alleged agreement dated 21.1.2004. It is further stated that the defendant is financially weak person. Jarnail Singh borrowed an amount initially from the brother of the plaintiff, namely, Pritam Singh, which could not be repaid by the defendant due to bad financial position.

The plaintiff as well as his brother have got executed a number of agreement to secure the borrowed amount. The present alleged agreement is also one of them. The defendant never executed any agreement with intention to sell his property to the plaintiff as well as his brother. The suit property has been leased out for ten years to the brother of the plaintiff and his brother and nephew are in possession of the suit land. It is also the case of the defendant that even the defendant did not receive ₹1,50,000/- mentioned in the alleged agreement to sell dated 21.1.2004. The amount was borrowed and it was a subject matter of previous writings dated 23.3.1996 and 14.4.1998. The borrowed amount of these documents adjusted in lease deed dated 16.6.2003 and in alleged agreement to sell dated 21.1.2004.

After framing of the issues and the parties led their evidence, the learned Civil Judge (Junior Division), Dasuya, dismissed the suit of the plaintiff. The plaintiff filed an appeal before the learned District Judge, Hoshiarpur and the same was partly allowed vide judgment and decree dated 16.9.2013 by the learned Additional District Judge, Hoshiarpur and the suit of the plaintiff was partly decreed to the effect that he is entitled to alternative relief for recovery of amount of ₹2,50,000/- along with interest at the rate of 12% per annum from the date the amount was borrowed by the defendant till that day and future interest at the rate of 6% per annum. Aggrieved against the impugned judgment and decree passed by the learned Additional District Judge, Hoshiarpur, the present regular second appeal has been filed.

At the time of arguments, learned counsel for the appellant

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argued that judgment and decree passed by the the learned Additional District Judge, Hoshiarpur, should be modified and relief of specific performance of agreement to sell should be given. He also argued that the findings given by the learned Additional District Judge are not as per evidence and law.

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

From the evidence on record, I find that the learned Additional District Judge, Hoshiarpur, has correctly appreciated the evidence on record and has correctly held that there was no intention of the parties to execute the sale deed. This fact is itself clear from the fact that agreement was executed on 21.1.2004 and then after two years on 21.1.2006 further extension upto two years was granted. The case of the defendant is that even ₹1,50,000/-, which was shown as earnest money, has not been paid at that time. Rather, the defendant being in weak financial position borrowed money from the plaintiff and his brother and the suit land has already been leased to the brother of the plaintiff who is in possession of the same. The version of the defendant from the evidence on record looks more probable. The statements of witnesses produced by the plaintiff, which have been discussed by the lower Court, show that PW-1 states in examination-in-chief that the defendant has received ₹1,50,000/- as earnest money from him on the date of execution of agreement to sell dated 21.1.2004, but in cross-examination he stated that he had not gone to Tehsil due to his ill health and he had given the money to Pritam Singh and he has again deposed that he

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was present when notes of denomination of 500/500 were given to Jarnail Singh. PW-2 Mohinder Pal-scribe has also admitted that no payment was made at the time of writing Ex.P.3 in his presence. This witness also deposed that the plaintiff was not present at the time of scribing the agreement. But, he again deposed in contradiction of the plaintiff regarding the presence on 21.1.2004. Similarly, PW-3 Pritam Singh during cross-examination deposed that no transaction of giving money took place on the date of execution of agreement Ex.P.9. So, in view of these statements by the witnesses the version given by the defendant that the loan amount had been adjusted in the agreement and this agreement was a security document is more probable. The witness of the plaintiff cannot be believed on these facts. Further more, as the past consideration is good consideration, therefore, the learned Additional District Judge, Hoshiarpur, has given alternative relief correctly as per evidence and law. The judgment and decree passed by the learned Additional District Judge, Hoshiarpur, in no way, can be held as perverse or by misreading of the evidence. The judgment and decree passed by the learned Additional District Judge are correct and as per law which do not require any interference from this Court and the same are upheld. No substantial question of laws arises in this regular second appeal.

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

July 20, 2015.

(Inderjit Singh)
Judge

hsp