

In the High Court of Punjab and Haryana at Chandigarh

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CM No.4799-C of 2015
and
R.S.A. No.4444 of 2014 (O&M)

.....

Date of decision:4.5.2015

Dalbir Singh

.....Appellant

v.

Karam Singh

.....Respondent

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Surinder Mohan Sharma, Advocate for the appellant.

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Inderjit Singh, J.

CM No.4799-C of 2015:

For the reasons mentioned in the civil miscellaneous application, the hearing of the regular second appeal is liable to be preponed as the case is still at the stage of preliminary hearing.

Therefore, in the interest of justice, this civil miscellaneous application is allowed and the hearing of the appeal is preponed for today.

The regular second appeal be taken up for hearing today.

R.S.A. No.4444 of 2014 (O&M):

This regular second appeal has been filed by Dalbir Singh appellant-defendant against Karam Singh-respondent/plaintiff aggrieved

against the impugned judgment and decree dated 31.5.2012 passed by the learned Civil Judge (Junior Division), Ambala, and against the impugned judgment and decree dated 3.3.2014 passed by learned Additional District Judge, Ambala, vide which the appeal filed by the defendant has been dismissed.

The brief facts of the case are that Karam Singh-plaintiff filed suit against Dalbir Singh-defendant for possession by way of specific performance of agreement to sell and permanent injunction. It is mainly stated that the date for specific performance of agreement to sell dated 9.10.2006 was extended on 11.6.2007 in respect of land measuring 4 Kanals 12 Marlas out of land measuring 23 Kanals and land measuring 4 Kanals out of land measuring 40 Kanals as fully described in the head note of the plaint on payment of ₹1.20 Lacs as balance sale consideration along with consequential relief of permanent injunction restraining the defendant from interfering in possession of the plaintiff over the land measuring 8 Kanals, in any manner, and also from alienating the same.

The case of the plaintiff is that the defendant had agreed to sell his land measuring 8 Kanals 12 Marlas i.e. suit land for a valuable sale consideration of ₹11,20,000/- in lump-sum vide agreement to sell dated 9.10.2006 after receiving ₹2 Lacs as earnest money and the date for execution and registration of the sale deed was fixed as 15.6.2007. However, on 11.6.2007, on the request of the defendant, the date was extended to 16.7.2007 as the defendant failed to redeem the land from the Bank by repaying the loan and the plaintiff paid ₹8,00,000/- to enable the

defendant to discharge the Bank loan to execute the sale deed and obtained possession of land measuring 8 Marlas from the defendant vide a separate subsequent writing dated 11.6.2007. It was the case of the plaintiff that on 16.7.2007, the plaintiff along with balance sale consideration and other incidental charges, waited for the defendant in the office of Sub Registrar, Mullana, but the defendant did not turn up.

On notice, none appeared on behalf of the defendant despite service and he was proceeded against ex-parte. In ex-parte evidence, the plaintiff himself has stepped in the witness box as PW-1 and tendered his affidavit Ex.PW.1/A. He has also examined Devi Dayal as PW-2 and Sarwan Singh as PW-3. On 9.9.2010, the defendant had appeared through his counsel and had moved an application for setting aside the ex-parte proceedings, which was dismissed vide order dated 26.5.2011. The revision petition filed against that order was also dismissed vide order dated 7.3.2012 by this Court. When the case was fixed for ex-parte arguments, the counsel had appeared on behalf of the defendant and addressed the arguments and contested the suit.

The learned Civil Judge (Junior Division), Ambala vide judgment and decree and dated 31.5.2012 decreed the suit of the plaintiff for specific performance by directing the defendant to execute the sale deed in favour of the plaintiff within a period of two months from the date of deposit/payment of balance sale consideration of ₹2,04,000/- by the plaintiff. An appeal was filed by the defendant against the judgment and decree which was also dismissed by the learned Additional District Judge,

Ambala vide judgment and decree dated 3.3.2014. Aggrieved against these judgments and decrees of the Courts below, the present regular second appeal has been filed.

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

At the time of arguments, learned counsel for the appellant argued on one point only that the plaintiff was not ready and willing to perform his part of the contract as in the plaint he has stated the total consideration as ₹11,20,000/-, whereas as per the agreement, it was ₹11,20,000/- per acre. No other point has been argued.

From the record, I find that firstly the findings of fact given by the Courts below are correct and as per law. The Courts below have appreciated the evidence in right perspective. The findings given by the Courts below cannot be held as perverse. No substantial question of law arises in this regular second appeal. Further more, the defendant was proceeded against ex-parte before the lower Court and he had not filed any written statement by taking the plea that the plaintiff was not ready and willing to perform his part of the contract. There is no evidence led by the defendant before the learned Civil Judge (Junior Division), as he was proceeded ex-parte. The appellant only appeared through his counsel, who argued in this matter, but there was no written statement and no evidence was produced by the defendant. Therefore, it will be treated that there is no such plea of the defendant before the lower Court. Secondly, on this ground the evidence of the plaintiff also remained unchallenged and un rebutted.

Next, I find that in the agreement Ex.P.1, it is written that the sale consideration is ₹11,20,000/- per acre. But in the document Ex.P.2, which is a separate document and vide which the date was extended from 15.6.2007 to 16.6.2007, which was executed on 11.6.2007, the sale price has been written as ₹11,20,000/- lump-sum. It is specifically written that ₹8 Lacs has been received by the defendant on that day and the remaining sale consideration remains to be ₹1,20,000/-. There is another document i.e. receipt executed by the defendant after receiving ₹8 Lacs. In that document also, total sale consideration was written as ₹11,20,000/-.

Learned Civil Judge (Junior Division), correctly appreciating the evidence stated that other documents executed by the defendant i.e. Ex.P.2 etc. are in continuation to agreement to sell Ex.P.1. The Court has considered the price of the suit land at ₹11,20,000/- per acre and that is why the plaintiff was asked to deposit that amount accordingly as per the rate given in the agreement Ex.P.1 i.e. remaining sale consideration of ₹2,04,000/-. These findings have been upheld by the learned Additional District Judge while re-appreciating the evidence. The agreement to sell has been admitted by the defendant as per his arguments before the learned Civil Judge (Junior Division). From the judgments and decrees passed by the Courts below, I find that the findings have been given correctly as per evidence and as per law and these judgments do not require any interference from this Court and the same are upheld. Otherwise also, no question of law, much less any substantial question of law arises in the present regular second appeal.

Finding no merit in the present regular second appeal, the same
is dismissed.

May 4, 2015.

(Inderjit Singh)
Judge

hsp