

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 52 of 2014 (O/M)
Date of decision : 19.11.2015

Ram Sakhi Bharti

..... Appellant

Versus

Panna Lal Sharma

..... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Varinder Kumar Sandhir, Advocate,
for the appellant.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

Impugned in the present regular second appeal is the judgment and decree dated 23.10.2013, passed by the learned Additional District Judge (Adhoc), Fast Track Court, Amritsar, affirming the judgment and decree dated 11.8.2011, passed by the learned Civil Judge (Junior Division), Amritsar, whereby the suit of the plaintiff for possession by way of specific performance of agreement to sell dated 22.8.2001, was decreed with costs and the defendant/appellant was directed to execute the sale deed as per the agreement of sale dated 22.8.2001, within a period of two

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months after receiving the balance sale consideration, in favour of the plaintiff, failing which the plaintiff would be at liberty to execute the sale deed by taking recourse to law. The defendant/appellant was also restrained from transferring, alienating, selling, mortgaging, leasing out, letting out the suit property, except in due course of law.

As per the case of the plaintiff, the defendant/appellant had executed an agreement of sale regarding disputed property on 22.8.2001 for Rs. 5,10,000/-. Rs. 4,05,000/- were paid as earnest money. The sale deed was to be executed on or before 21.8.2002. The possession of one room out of the suit property was delivered to the plaintiff. Thereafter, on the request of the defendant/appellant, the date of execution of sale deed was extended to 20.7.2004. On the said date, the plaintiff appeared before the Sub Registrar, Amritsar, alongwith balance sale consideration in the shape of pay order/demand draft No. 011732 dated 19.7.2004 for a sum of Rs. 1,05,000/- and other registration charges, but the defendant/appellant did not turn up.

The case of the defendant/appellant is that of denial. It was stated that the plaintiff is a Kariyana Merchant and the defendant/appellant was his customer. The plaintiff advised the defendant/appellant to send her son abroad, but defendant was unable to send her son due to scarcity of money. The defendant/appellant agreed to invest Rs. 4,00,000/- for expenses to

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be incurred for visa and travelling expenses. The defendant/appellant paid Rs. 80,000/- in cash alongwith passport of her son and original sale deed of residential house. The plaintiff agreed to invest the balance amount of Rs. 3,20,000/- and the original sale deed remained in his custody as surety. The thumb impressions of defendant/appellant were obtained on different stamp papers as surety. Neither her (defendant's) son has been sent abroad nor the original sale deed of the property in question and blank thumb marked/signed stamp papers alongwith Rs. 80,000/-, paid by the defendant/appellant in cash to the plaintiff, have been returned. Now, those blank stamp papers have been converted into this agreement of sale.

I have heard the learned counsel for the appellant and have also carefully gone through the file.

Both the Courts below have recorded the concurrent finding of facts that the agreement of sale of the property in question is proved. Therefore, the suit of the plaintiff was decreed with costs.

The learned counsel for the appellant has argued that one of the attesting witnesses of the agreement to sell, namely, Harjinder Singh Walia (PW2), who had tendered his affidavit, was only examined in examination-in-chief and later on, he was given up. Therefore, he was wrongly relied upon by the lower Court. However, another attesting witness Kahan Chand appeared as PW1 and his

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cross-examination shows that he had not signed any other document. It is contended that the statement of defendant/appellant coupled with several endorsements show that the agreement of sale is fraud and fabricated.

The perusal of agreement of sale shows that there are as many as five endorsements, extending the date of execution of the sale deed.

The learned counsel for the defendant/appellant has argued that on the endorsement (Ex.P4), under the signatures of the plaintiff, the date is mentioned as 25.3.2003, whereas under the thumb impression of defendant/appellant, the date is mentioned as 25.6.2003 and there is overwriting over the month in the said endorsement.

The perusal of the last endorsement shows that there is no cutting or overwriting in the body of the endorsement, but there is overwriting over the date under the signatures of the plaintiff. However, there is no overwriting under the signatures of other attesting witnesses and the thumb impressions of the defendant/appellant. Rakesh Kumar, son of the defendant/appellant had also signed this endorsement. The fact that there are five endorsements and each endorsement, which bears the thumb impression of defendant/appellant, shows that these cannot be fabricated, as claimed by the defendant/appellant.

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The last endorsement also bears the signatures of the son of the defendant, who was allegedly to be sent abroad. Therefore, I am of the view that the Courts below have rightly held that the agreement of sale has been proved. Therefore, the suit was rightly decreed with costs.

Faced with this situation, the learned counsel for the appellant has argued that it is the only residential house of the defendant/appellant and it is case of undue hardship. Therefore, the alternative relief may be granted.

I am of the view that there is nothing on file to show that it was ever pleaded before the Courts below or in the written statement that there is any such undue hardship. Therefore, such a plea cannot be allowed to be raised for the first time before this Court. There are no merits in the present regular second appeal nor any substantial question of law arises in the same. Hence, the present regular second appeal is dismissed.

(KULDIP SINGH)
JUDGE

19.11.2015
sjks