

RSA No. 5680 of 2014 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 5680 of 2014 (O&M)
Date of decision : December 10, 2015

Bhim Singh

..... Appellant

Versus

Pawan Kumar

..... Respondent

RSA No. 5698 of 2014 (O&M)

Bhim Singh

..... Appellant

Versus

Balbir Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R. S. Budhwar, Advocate
for the appellant in both the appeals.

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 order of mine shall dispose of two appeals bearing RSA No. 5680 and 5698 of 2014 as common question of law involves in both the appeals.

The appellant-defendant is aggrieved of the concurrent finding of fact whereby suit of the respondent-plaintiff for recovery of ₹3,50,000/- and ₹3,25,000/- respectively along with interest at the rate of 6% per annum has been decreed.

Learned counsel appearing on behalf of the appellant submits that an agreement to sell dated 2.3.2006 @ ₹1,000/- per sq.yard for total sale consideration of ₹4,75,000/- in RSA No.5680 of 2014 and ₹3,25,000/- in RSA No.5698 of 2014 was entered into between the plaintiff and defendant. However, since the original agreement was lost and on the request of defendant land measuring 125 sq.yards was returned to defendant on 17.5.2008. The defendant returned the sale consideration regarding 125 sq.yards of land and the sale consideration of ₹3,50,000/- for 350 sq.yards of land was left with defendant in view of original agreement dated 2.3.2006. However, plaintiff was requested several times to get the sale deed executed as per agreement dated 2.3.2006 and since the sale deed was not executed the land was transferred in favour of his wife on 28.5.2008. Plaintiff requested the defendant to return the sale consideration.

He further submits that it has not been proved on record that the balance amount sought to be recovered had been paid. This fact had been admitted by the plaintiff in cross examination. They did not have any independent receipt, therefore no obligation was discharged. This aspect has not been noticed by the courts below. Thus, there is illegality and perversity in the

impugned orders, much less substantial question of law arise for determination by this court.

I have heard learned counsel for the appellant and appraised the paper book.

The agreement to sell had not not been disputed, much less the payment of earnest money. The only controversy was as to whether the plaintiff's earnest money lying with the defendant had actually been paid by his nephew or not. In case, the payment of earnest money had been paid, the defendant would have taken the full and final receipt, much less no objection certificate from the respondent-plaintiff in order to avoid any subsequent litigation. No such receipt has been obtained. It has also not been proved on record that the obligation of the appellant-defendant was discharged by his nephew.

The entire cross examination has to be read and not two lines in isolation. Keeping in view the totality of facts and circumstances of the case, it has ex facie been proved on record that the earnest money has actually been paid and accordingly the aforementioned suits have been decreed.

In view of the above, I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgment and decree of the appellate court.

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

In view of what has been observed above, the appeals are devoid of merits, accordingly, the same are dismissed.

(AMIT RAWAL)
JUDGE

December 10, 2015
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