

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

RSA No.759 of 2014 (O&M)

Date of decision: 17.08.2015

Amar Singh

..... Appellant

versus

Darshan Singh

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Vinod Khunger, Advocate for the appellant
Mr.Anoop Singla, Advocate for
Mr.S.K.Arora, Advocate for the respondent

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J. (Oral)

This is Regular Second Appeal against the judgment dated 19.10.2013 passed by the learned Additional District Judge, Ferozepur, affirming that of the learned Civil Judge, Senior Division, Ferozepur dated 8.9.2012, vide which, suit of the plaintiff- respondent for specific performance of the agreement to sell dated 4.1.2007 was decreed and the defendant-appellant was directed to execute the sale deed in favour of the plaintiff-respondent within two months.

The facts of the case are that according to the plaintiff-respondent, appellant-defendant had executed agreement to sell dated 4.1.2007 in favour of the plaintiff-respondent for a sale consideration of Rs.5,18,750/- i.e. Rs.2,18,750/- as sale consideration for land measuring 7 kanals at the rate of

Rs.2,50,000/- per acre and Rs.3,00,000/- as sale consideration for house in question. Rs.1,50,000/- were paid as earnest money. The date for registration and execution of sale was fixed as 20.2.2007. The agreement was scribed by Miss Arvinder Kaur, Advocate, Notary Public and entered in her register. On the date fixed, the plaintiff appeared before the concerned sub-Registrar, Ferozepur, along with the balance sale consideration and necessary expenses to get the sale deed executed but the defendant did not appear and consequently, the sale deed was not executed. He also got marked his presence before the Sub-Registrar by submitting an application.

In written statement, the defendant admitted the agreement. It was claimed that on the date fixed for the sale, the plaintiff did not turn up before the Sub-Registrar. In fact the defendant issued a legal notice to the plaintiff on 23.2.2007. But no reply was given. Therefore, defendant has forfeited the earnest money.

Learned Civil Judge, Senior Division, Ferozepur, after recording the evidence of the parties, came to the conclusion that the defendant did not execute the sale deed and therefore, decree was passed. The findings were affirmed by the learned Additional District Judge, Ferozepur.

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

Learned counsel for the appellant has argued that in this case, Court fee was affixed on the alternative relief of Rs.2 lac only, therefore, decree for the alternative relief of recovery of Rs.2 lac

should have been granted. It has been contended that an objection was taken in the written statement that the suit was not properly valued for the purpose of Court fee. However, learned counsel has not denied that the question of valuation of the suit was not raised before the learned Civil Judge, Senior Division, Ferozepur as well as learned Additional District Judge, Ferozepur. I am of the view that such plea cannot be allowed to be raised for the first time before this Court to avoid the decree. If deficient Court fee was paid, the objection should have been taken at the initial stage and the plaintiff make good the deficient Court fee. In any case, this is no ground to decline the relief. Findings of fact have been recorded by both the Courts below that the plaintiff was ready and willing to perform his part of the contract. No question of law much less substantial question of law is involved. There are concurrent findings of two courts below. Hence, the appeal is dismissed.

In view of disposal of the appeal, all applications pending also stand disposed of.

17.08.2015*gk***(Kuldip Singh)
Judge**