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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 01.04.2016
RSA-3108-2009 (O&M)

1.

Jai Karan Sharma

...Appellant

Versus

Naresh Kumar (deceased) through his LRs

...Respondent

2.

RSA-4227-2009 (O&M)

Naresh Kumar (deceased) through his LRs

...Appellant

Versus

Jai Karan Sharma

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.K. Dogra, Advocate
for the appellant (in RSA-3108-2009) and
for the respondent (in RSA-4227-2009).

Mr. Padamkant Dwivedi, Advocate and
Mr. Karan Bhardwaj, Advocate
for the respondent (in RSA-3108-2009) and
for the appellant (in RSA-4227-2009).

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.3108 of 2009 titled as **“Jai Karan Sharma V/s Naresh Kumar (deceased)**
through LRs”, filed at the instance of the appellant-plaintiff and **RSA No.4227**

of 2009 titled as “Naresh Kumar (deceased) through his LRs V/s Jai Karan Sharma”, filed at the instance of the respondent-defendant.

Mr. M.K. Dogra, learned counsel appearing on behalf of the appellant-plaintiff (in RSA-3108-2009) submits that the suit for specific performance of the agreement to sell dated 15.11.2001 in respect of house measuring 303/4 marlas consisting of one room, latrine, bath room, boundary wall, boundaries, details of which mentioned in head-note of the plaint bearing No.15/1552 share of land measuring 19 kanals 8 marlas has been dismissed by the lower Appellate Court. Against the total sale consideration of ₹ 1,70,000/-, payment of ₹ 1,00,000/- as earnest money was given by the appellant-plaintiff Jai Karan Sharma to Naresh Kumar. The trial Court on the basis of the preponderance of evidence, granted discretion as per the Section 20. Agreement to sell had been proved through the testimony of the attesting witness, much less, scribe. However, the lower Appellate Court modified the judgment and decree of the trial Court by holding that the plaintiff is entitled to refund of the earnest money along with interest @ 6%. He further submits that respondent-defendant has failed to prove the alleged story of loan and or any other evidence belying the signatures on the agreement to sell and urges this Court to formulate the substantial questions of law as culled out in the memorandum of appeal.

Mr. Padamkant Dwivedi, learned counsel appearing on behalf of the appellant (RSA-4227-2009) and for the respondent (in RSA-3108-2009) submits that the lower Appellate Court has committed illegality and perversity as the appellant-plaintiff was not ready and willing to perform his part on the

agreement to sell. Umpteen number of documents have been brought on record to show that it was a money transaction entered into between appellant-plaintiff Jai Karan Sharma and Naresh Kumar as it was not a first instance. Even the alleged loan had also been repaid, which has been proved through the document Ex.D-1/1 and prays for dismissal of the appeal bearing No.3108 of 2009 as no substantial questions of law arises for determination and urges this Court to formulate the following substantial questions of law in the appeal bearing No.4227-2009:-

1. Whether the judgment and decree of the lower Appellate Court ordering for refund of the earnest money is sustainable in the eyes of law or not?
2. Whether, the judgment and decree of the lower Appellate Court suffers from illegality and perversity or not?

Mr. M.K. Dogra, learned counsel appearing on behalf of the respondent (in RSA-4227-2009) submits that the lower Appellate Court has not examined the statutory provisions of law, as much as that, as per the provisions of Section 20 of the Specific Relief Act, 1963, hardship cannot be a ground to discard the discretion and urges this Court for decreeing the suit in toto and prays for dismissal of the appeal bearing No.4227 of 2009.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no substance in the plea of Mr. M.K. Dogra for the reason, that it has been proved on record that there had been a loan transaction between Jai Karan Sharma and Naresh Kumar since deceased. Regarding money transaction, in fact, it has surfaced in cross-examination, that

prior to agreement to sell in question, the plaintiff had entered into another agreement to sell with him and this fact was concealed in plaint. Once, the parties had been entering into agreement time and again, an irresistible conclusion is drawn that the transaction was not for selling of the house, but a loan transaction. In these circumstances, the appellant-plaintiff apparently appeared to have converted the same an agreement to sell. It is unfortunate that during the pendency of the appeal, Naresh Kumar died, who was earning day-to-day by selling 'kulcha cholla' on a 'rehri' survived by a widow. It is only a house, in which, widow is living.

Keeping in view the aforementioned facts and circumstances, the substantial questions of law as noticed above in the appeal bearing No.4227 of 2009 are answered in favour of the appellant Naresh Kumar and against the respondent Jai Karan Sharma. Suit of specific performance is ordered to be dismissed in toto. There shall be no order shall be passed for refund of the earnest money.

Accordingly, the appeal bearing No.3108 of 2009 is dismissed and the appeal bearing No.4227 of 2009 is allowed.

01.04.2016
yogesh

(AMIT RAWAL)
JUDGE