

Regular Second Appeal No.1442 of 2010 (O&M) { 1 }

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1442 of 2010 (O&M)
Date of Decision: August 5th, 2016

Bhupinder Kaur

...Appellant

Versus

Dalip Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.P.S.Khurana, Advocate,
for the appellant.

Mr.Vinod Kataria, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the concurrent findings of facts and law, whereby the suit filed on 30.7.1999 seeking specific performance of the agreement to sell dated 25.2.1999, has been dismissed by both the Courts below on the ground that the contents of the aforementioned agreement, before getting the signatures of the defendant, was not read over, much less payment of earnest money of ₹92,000/- is not alleged to have been proved against the total sale

consideration of ₹1,50,000/-.

Regular Second Appeal No.1442 of 2010 (O&M) { 2 }

Mr.P.S.Khurana, learned counsel for the appellant-plaintiff submits that there is a gross misreading and misconstruction of the oral and documentary evidence inasmuch as that the respondent-defendant prior to filing of the present suit, filed Civil Suit No.560 dated 11.5.1999 seeking restraint order against the appellant-plaintiff. In paragraph 2 of the pleadings, execution of the agreement to sell was admitted by stating therein that the same was forged, fictitious and fabricated. Written statement was filed and it was stated that a sum of ₹92,000/- was paid. Appellant made a statement that she will not dispossess the respondent except in due course of law and accordingly the suit was withdrawn vide order dated 26.5.2000. All the documents have been produced on record as Ex.P30, Ex.P31, Ex.P32 and Ex.P34. Ex.P30 is the plaint, Ex.P31 is the written statement, Ex.P32 is the statement and Ex.P34 is the order, thus, both the Courts have committed illegality and perversity in not referring to the oral and documentary evidence and, thus, it is a fit case for setting-aside of the judgments and decrees of both the Courts below by exercising the discretion, for, the defendant has not been able to dispel his signatures on the agreement to sell. The plea of taking of loan of ₹20,000/- has also not been proved on record.

He further submits that the appellant-plaintiff will compensate the respondent-defendant owing to the fact that the

Regular Second Appeal No.1442 of 2010 (O&M) { 3 }

agreement to sell is quite old in case this Court exercises the discretion and, thus, prays for formulating the following substantial questions of law:-

- 1) Whether the judgments and decrees of both the Courts below suffer from illegality and perversity in not referring the aforementioned documents, Ex.P30, Ex.P31, Ex.P32 and Ex.P34?
- 2) Whether non-referring of the documents amounts to illegality and perversity?

Mr.Vinod Kataria, learned counsel for the respondent-defendant submits that the witness from the bank was examined, who stated that during the period of agreement to sell, plaintiff had not withdrawn ₹92,000/- and, therefore, the payment of the earnest money has not been proved and it is in this backdrop of the matter, the Courts below declined the discretion, much less alternative relief. He submits that many years have been spent on the litigation and a valuable right has been accrued in favour of the respondent-defendant. It was a complete loan transaction and in the previous suit also, the agreement was referred to as plaintiff forged the same. The findings cannot be interfered with unless and until gross misconstruction and misdirection is pointed out and, thus, prays for affirming the findings rendered by both the Courts

below.

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

The agreement to sell, aforementioned, is for land measuring 3 marlas for a total consideration of ₹1,50,000/- and a sum of ₹92,000/- is stated to have been paid as earnest money by the plaintiff. Once the respondent-defendant has failed to disprove his signatures on the agreement to sell and in view of the admission of the same in the statement, I am of the view that no further evidence was required to be led by the plaintiff to prove the agreement.

On going through the judgments and decrees of the Courts below, I am of the view that both the Courts have gravely committed illegality and perversity, much less failed to discharge their duty in not referring the documentary evidence/pleadings, though they are enjoined upon an obligation to refer each and every documents, particularly the Lower Appellate Court has to frame a point for consideration as enshrined under Order 41 Rule 31 CPC.

For the sake of brevity, Para 2 of the plaint and the corresponding paragraph of the written statement read thus:-

“Para No.2 of the plaint

That at the time of execution of the agreement to sell dated 25.2.1999 the defendant received a sum of Rs.92,000/- from

the plaintiff as earnest money in advance and agreed to execute the sale deed in favour of the plaintiff on or before 16.7.1999.

Paragraph 2 of the written statement on merits

“Para No.2 of the plaint is wrong and denied. The defdt. never received Rs.92,000/- from the plaintiff as earnest money on 25.2.99 nor the plaintiff ever paid this amount to the defdt. It is denied that the sale deed was to be executed on or before 16.7.99.”

On juxtaposition of the aforementioned pleadings, it is irresistibly concluded that the agreement to sell was actually executed and readiness and willingness has been proved as the suit had been filed in the month of July, 1999 and a dispute arose few months earlier. I am of the view that it is a fit case where discretion under Section 20 of the Specific Relief Act ought to have been granted.

For the foregoing reasons, I find that the judgments and decrees of both the Courts below are not sustainable and hereby set-aside. The suit is decreed.

Since the agreement to sell is of 1999, I deem it appropriate to order for payment of compensation of ₹2,50,000/- over and above the balance sale consideration to the respondent-defendant in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Nanjappan**

Versus Ramasamy & another, 2015 (2) RCR Civil 224. The plaintiff

Regular Second Appeal No.1442 of 2010 (O&M) { 6 }

is directed to deposit the same within a period of two months from the date of receipt of certified copy of this order. The defendant shall execute the sale deed, failing which the appellant-plaintiff shall be competent to seek execution of the judgment and decree of this Court in accordance with law.

Appeal stands allowed. Decree-sheet is ordered to be prepared.

Records be sent back forthwith.

August 5th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No