IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: May 24th, 2016

1. R.S.A.No.3886 of 2010 (O&M)

Kashmir Singh

...Appellant

Versus

Lakhwinder Singh & another

...Respondents

2. R.S.A.No.1522 of 2012 (O&M)

Kashmir Singh

...Appellant

Versus

Lakhwinder Singh & another

...Respondents

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

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?

Present: Mr.Munish Gupta, Advocate,
for the appellant in RSA No.3886 of 2010.

Mr.Manmeet Singh Rana, Advocate,
for the appellant in RSA No.1522 of 2012.

Mr.Raj Kumar Kakkar, Advocate,
for the respondents in both the appeals.

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AMIT RAWAL, J. (Oral)

By this order, I intend to dispose of two Regular Second Appeals No.3886 of 2010 and 1522 of 2012 as the common questions of law and facts are involved in both the appeals.

Appellant-plaintiff filed two civil suits, one for seeking specific performance of the agreement to sell dated 14.5.2001 and the other for recovery. The same have been dismissed by both the Courts below.

Mr.Munish Gupta, learned counsel for the appellant in RSA No.3886 of 2010 and Mr.Manmeet Singh Rana, learned counsel for the appellant in RSA No.1522 of 2012, submit that no doubt the appellant-plaintiff has been doing the business of commission agent, but the execution of the agreement to sell has been proved through the testimony of two attesting witnesses, namely, Nirmal Singh (PW-2) and Balkar Singh (PW-4), but the Courts below have disbelieved their statements on the ground that one of the witness, namely, Nirmal Singh was related to the plaintiff and other witness was his customer. On the contrary, the defendants in the cross-examination admitted that they used to append signatures whenever they agreed to take loan, but the Courts below ought to have ordered for refund of the amount instead of discretionary relief. Civil Suit No.341-1 was filed on 30.5.2002 after the expiry of target date, i.e., 12.5.2002. However, in the other case, the plaintiff did not seek specific performance, but only sought recovery of the amount. The Courts below have also declined the same on the ground that the agreement to sell had been proved to be suffering from misrepresentation and fraud. The Court has also non-suited him for not proving the money. The attesting witnesses have said that the money/amount disbursed was in their presence. Non-reference of the previous agreements to sell dated 8.5.1999 and 23.5.2000 was meaningless as they have been cancelled. However, in the replication, the status of the same has been disclosed. The Court ought to have granted the alternative relief in the suit seeking specific performance of the agreement to sell by decreeing the suit for recovery of Rs.2,80,000/- as principle along with interest as it was the commercial transaction and, thus, urge this Court to formulate the substantial questions of law as drawn in the memorandum of appeal.

Mr.Raj Kumar Kakkar, learned counsel appearing for the respondent-defendants in both the cases submits that both the Courts below have examined the evidence threadbare and found that the agreement to sell was suffering from suspicious circumstances, in essence the plaintiff had failed to prove the execution of the same and, thus, has been held not entitled to for discretionary relief and as well as the refund of the earnest money or amount sought to be recovered. He further submits that Nirmal Singh was a stock witness as in all the agreements to sell, allegedly entered at the instance of the plaintiff, he had been a witness. The plaintiff was afraid that he would be denied discretionary relief in case he discloses the execution of the previous agreement, ibid, thus, the plaintiff is not entitled to the refund of the earnest money and the recovery of the amount sought. He also submits that on bare looking of the agreements to sell, it is found that the same have been filled on the basis of the signatures, in essence, the signatures have been adjusted while writing the agreement and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the appeals san merits, for, on going through the agreement to sell, it apparently found that the signatures of the defendants are not at one place on each page, i.e., at the first page, second page and at the end of third page also. In these circumstances, the stamp papers have been filled up later on to be read as agreements. The plaintiff has not been able to prove the payment as he failed to produce on record the Bahi entries or statement of account to prove the alleged payment of amount even if it is assumed that it was a loan transaction. Non-disclosure of the previous agreements to sell also shows that there was a loan transaction. In the instant case, this fact has not been proved. The other witness Balkar Singh has been belied as he is a customer. He feigned ignorance about the currency of the money. However, all these factors show that the plaintiff has failed to discharge the onus.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below as the same are based upon appreciation of oral and documentary evidence. No ground for interference is made out.

The appeals stand dismissed.

May 24, 2016 **(AMIT RAWAL)**
ramesh **JUDGE**