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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4930-2010 (O&M)

Date of decision : 29.03.2016

Satender

...Appellant

Versus

Jagdish Chander

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. N.R. Dahia, Advocate for
Mr. Jagat Singh, Advocate
for the appellant.

Mr. Naveen S. Bhardwaj, Advocate
for the respondent.

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)

The appellant-defendant is aggrieved of the judgment and decree rendered by both the Courts below, whereby the suit has been decreed in respect of the area 7 bigha 4 biswas.

Mr. N.R. Dahia for Mr. Jagat Singh, learned counsel appearing on behalf of the appellant-defendant submits that there was a categoric plea in the written statement that it was a loan transaction. The respondent-plaintiff has not even honoured the judgment and decree of the Courts below, whereby he was ordered to deposit the balance sale consideration. As per the agreement, earnest money of ₹ 1,25,000/- was paid. The property in the revenue record was joint, but without any share, specific possession was agreed to be sold, has given his share, therefore, the agreement was lacking with the particulars. In

fact, it was the blank paper used for security of the loan which has been converted into the agreement to sell, thus, urges this Court to formulate the substantial questions of law as culled out in the memorandum of appeal.

Mr. Naveen S. Bhardwaj, learned counsel appearing on behalf of respondent submits that preceding to filing of the suit on 04.01.2003, a legal notice was sent and there was a specific averment in the plaint that the plaintiff had been calling the defendant for execution of the sale deed in his favour and ultimately compelled to file the suit. The target date was 30.06.2000 and it was extended upto 30.12.2000. Earnest money of ₹ 1,25,000/- out of total sale consideration of ₹ 1,50,000/- was paid. One of the attesting witness i.e. deed writer has been examined to prove that it was an agreement to sell, not a loan transaction viz-a-viz the payment of the balance sale consideration, the same could not have been deposited for the reason that there was a stay of the judgment and decree granted by the lower Appellate Court vide order dated 26.08.2006 and after dismissal of the appeal, this Court had also granted interim stay vide order dated 24.01.2012 and prays that no substantial question of law arises for determination.

Learned counsel for the appellant-defendant submits that the trial Court decree envisaged the deposit of balance sale consideration within one month, but there was interim stay of the judgment and decree of the trial Court dated 19.09.2006 granted by the lower Appellate Court vide order dated 26.08.2006 and therefore, the decree had become un-executable as per the provisions of Section 28 of the Specific Relief Act, 1963.

I have heard the learned counsel for the parties and appraised the paper-book and of the view that there is no merit in the appeal, for the reason

that the appellant-defendant has failed to belie his signatures on the agreement to sell, in essence, has not been able to discharge the onus that it was a loan transaction. In case, it was a loan transaction, nothing prevented the defendant to reply to the legal notice which was sent prior to the preceding to filing of the suit and the story of the alleged loan transaction has been coined for the first time on receipt of the notice of suit. One of the attesting witness i.e. deed writer has proved that it was an agreement to sell, not a loan transaction. The respondent-plaintiff failed to prove the repayment of the alleged loan transaction, much less, the circumstances how the loan was obtained, when the parties are not familiar to each other. The lower Appellate Court granted stay on 26.08.2006 and this Court on 24.01.2012 and therefore, no occasion arose for the plaintiff to deposit the balance sale consideration, in my view, the decree cannot be said to have become un-executable.

Keeping in view the aforementioned facts and circumstances of the case, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination.

However, two months' time is granted to the respondent-plaintiff to deposit the balance sale consideration, failing which, the decree shall become un-executable, in case, the appellant-defendant does not come forward for execution and registration of sale deed, plaintiff shall be at liberty to seek execution in accordance with law.

With the aforesaid observations, the appeal stands dismissed.

29.03.2016
yogesh

(AMIT RAWAL)
JUDGE

