

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-2625 of 2011 (O&M)

Date of decision: 24.02.2016

Nathu Ram

...Appellant

Versus

Amardeep

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. B.S. Baath, Advocate
for the appellant.

Mr. Vipin Mahajan, Advocate
for the respondent.

Jitendra Chauhan, J. (Oral)

The plaintiff/respondent filed suit for specific performance of the agreement dated 03.07.2002. The trial Court vide judgment and decree dated 17.02.2009, dismissed the suit.

2. Aggrieved against the findings of trial Court, the plaintiff/respondent filed an appeal. The learned Appellate Court after evaluating the oral as well as documentary evidence on record, set aside the judgment of the trial Court, vide judgment

and decree dated 06.12.2010. Hence, the instant appeal at the behest of the defendant/appellant.

3. The suit for specific performance in pursuance to the agreement dated 03.07.2002, executed by the defendant in favour of the plaintiff regarding the house in question was dismissed by the trial Court, holding that the defendant had no intention to sell the house as alleged by the plaintiff and the agreement was only for the purpose of loan transaction which already stand paid by the plaintiff. The learned Appellate Court in para No. 27 of the judgment records as under:-

“27. After hearing the learned counsel for the parties and examining the judgment of the leaned lower Court in the light of evidence adduced by the parties in the learned lower Court, this Court is of the considered view that two questions arises before this Court as to whether document Exhibit P.1 is genuine or not? and secondly whether the document Exhibit P.1 was got signed from the defendant as blank at the time of disbursement of the loan to the defendant and if so whether the document Exhibit D.3 and Exhibit D4, which are alleged to be the receipts regarding repayment of the loan corroborates the fact that the transaction was not of the agreement to sell but the loan transaction?”

4. The plaintiff while appearing as PW4 had stated that

the defendant had received Rs.1,50,000/- as earnest money and the remaining sale consideration of Rs.85,000/- was agreed to be paid on 02.01.2004. A legal notice dated 14.01.2004, was also served upon the defendant calling upon him to execute the sale deed as per terms and conditions of the agreement dated 03.07.2002. It was further asserted that the defendant procured forged and fabricated receipts to commit fraud upon him and to mislead the Court, for which a criminal case has also been registered against the defendant, vide FIR No. 202 dated 20.10.2004. It has also come in the testimony that earlier also, he had executed an agreement with the defendant Nathu Ram which is on record as Ex.PW2/3 which was cancelled with mutual consent. Further, PW-2 Kulwinder Singh had stated that the agreement dated 03.07.2002 for sale of the house in question was executed in favour of plaintiff Amardeep. The total sale consideration was settled at Rs.2 lacs, out of which, Rs.1,50,000/- was received by the defendant Nathu Ram from the plaintiff in his presence. The agreement was read over and was signed by the defendant in his presence. Likewise plaintiff also examined Jagjit Singh, Wasika Nawis to prove the payment made to the defendant.

5. The suit was set in motion and the issues were framed. The learned trial Court on perusal of the evidence on record dismissed the suit of the plaintiff.

6. The plaintiff challenged the said decision in first appeal before the learned Appellate Court which has reversed the findings of the trial Court and decreed the suit in favour of the plaintiff for recovery of Rs.2,30,000/- along with interest @ 6% p.a., from the date of execution of the agreement till realization on the ground that the plaintiff was able to prove the agreement Ex.P1 and receipts Ex.D3 and D4 were found to be not genuine then in that eventuality, the plaintiff is liable to be compensated.

7. The main thrust of the argument of learned counsel for the appellant was that the appellant had never executed the agreement to sell in favour of plaintiff/respondent and the same is forged and fabricated document. He has further submitted that the respondent-plaintiff, being a money lender and had advanced the money to people, obtains signatures/thumb impressions on blank stamp papers as security of amount advanced by him and similarly, in the present case, the respondent/plaintiff had lent a sum of Rs.75,000/- @ 3.5% interest per month to the appellant/defendant which has been duly repaid by him in two

installments, vide receipts dated 02.11.2002 and 06.10.2003, duly exhibited by the plaintiff/respondent and thus nothing is due towards him.

8. The learned counsel for the respondent argued that the defendant/appellant had breached the terms and conditions of the agreement and thus was rightly held liable by the Appellate Court to pay Rs.2,30,000/- along with interest @ 6% p.a. He has also relied upon the decision rendered in **Harnam Singh** Vs. **Dogar Singh**, 2002(2) RCR (Civil) 202.

9. After hearing the arguments advanced by learned counsel for the parties and from the fact on record i.e., the agreement, receipts and the statement of PW2, Kulwinder Singh, it is conclusively proved that the plaintiff had made payment to the defendant to the extent of Rs.1,15,000/-. The learned Appellate Court after evaluating the whole evidence on record has rightly set aside the judgment of the learned trial Court and has rightly decreed the suit for recovery of Rs.2,30,000/- along with interest @ 6% per annum till realization as the plaintiff has not claimed the relief of possession by way of main relief of specific performance. In **Kashmir Singh** Vs. **Harnam Singh and another**, 2008(2) RCR (Civil) 688, it has been held as under:-

“17. The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

These are pure findings of fact. No question of law, much less the substantial question of law arises in the present appeal. Hence, no interference is called for.

Dismissed.

24.02.2016

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(JITENDRA CHAUHAN)
JUDGE