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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3459-2011 (O&M)
Date of decision : 17.08.2016

Kishan

... Appellant

Versus

Ajaib Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Harkesh Manuja, Advocate
for the appellant.

Mr. Vikram Singh, Advocate and
Mr. Abhinav Sood, 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 concurrent findings of fact, whereby the suit at the instance of respondent-plainitff seeking specific performance of the agreement to sell dated 18.07.2007 in respect of land measuring 8 kanals 1 marals agreed to be sold for a total sale consideration of ₹ 6 Lacs against the payment of ₹ 3 Lacs, preceded by legal notice dated 15.07.2008 and reply dated 22.07.2008, has been decreed.

Mr. Harkesh Manuja, learned counsel appearing on behalf of the appellant-defendant submits that there has been a gross misreading and misconstrual of the oral and documentary evidence, much less, cross-

examination of PW-2. Had the Courts below noticed the aforementioned fact, perhaps the discretion under Section 20 of the Specific Relief Act, 1963 could not have been granted or at the best, could have issued direction for refund of the amount of ₹ 3,00,000/- along with normal interest @ 6%. During the course of the argument, he has drawn the attention of this Court to the cross-examination of the PW-2 (Annexure P-2). The relevant portion of the same reads thus:-

“All the documents mentioned in the affidavit (objected to mode of proof).

I have been working on the post of Stock Man in village Bhadar since 1995. The people in village Bhadar also keep animals. They almost know me. While going from village Jattal to village Bhadar, the house of the plaintiff does not come in the way. The hospital is one the bus stand of the village. I had a talk with Kishan regarding loan on the house. I know Kishan defendant for last 6-7 years. I have not seen the field of the defendant. I do not know whether he has taken any loan on his land or not. It is correct that the defendant was in need of money. Perhaps the defendant had to pay loan of some person, for which he was in need of money. I do not know to whom he had to pay the money. Before 18.07.2007, the defendant had demanded money from me. He demanded ₹ 3.00 Lacs from me. Multan do agriculture work. On account of dilapidated condition of the hospital building, they used to sit in the house of Multan. I have not seen whether Amar Singh was Numberdar or not. We left for Madlauda Tehsil at 2.00 P.M. I along with Amar Singh Numberdar, Multan, and son of Kishn had proceeded. Again said son of Kishn was already in Tehsil, where discussion regarding writing of agreement took place. It is wrong that the defendant had been demanded ₹ 2.00 Lacs for one year. It is also wrong

that the defendant wanted to perform formalities regarding surety against loan. I paid ₹ 2,20,000/- in cash and ₹ 80,000/- through cheque of Central Cooperative Bank was paid, but due to mistake it was written Urban Cooperative Bank. I had taken ₹ 2,20,000/- from Rajinder Kumar Jain, Panipat, which was repaid lateron. After one or two months after taking the money from my GPF, that amount was repaid. After making payment of the cheque amount, the same was taken back. Between 18.07.2007 and 17.06.2008, I had talks with Jasmer son of Kishan. His son told that they would get the sale deed registered, but told to wait for two-four days. Kishan used to demand money. I told that if you desire to sell the land, then I can pay the money otherwise not. After writing work, son of Kishan continued visiting me for two-three months and used to demand money. I and Kishan met on the date of agreement. On 22.07.2008, I issued notice to Kishan and I had received reply thereof. After receiving reply to the notice.”

He further submits that it is a fit case where the matter is required to be remitted back to the lower Appellate Court to decide the same afresh.

Mr. Vikram Singh and Mr. Abhinav K. Sood, learned counsel appearing on behalf of the respondent-plaintiff submits that the concurrent findings of fact have been rendered. The agreement to sell has been proved through the testimony of attesting witness, much less, readiness and willingness. Even the payment of ₹ 3,00,000/- has been admitted by the appellant-defendant. The defendant has not been able to dispel the thumb impression on the agreement to sell, rightly so, the Courts below have exercised the discretion under Section 20 of the 1963 Act. There is no illegality and perversity in the findings under challenge, thus, urges this

Court for affirming the same, much less, it is not a fit case, where the matter is required to be remitted back.

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

On going through the judgment and decree of both the Courts below, particularly the lower Appellate Court being the last Court of fact and law, I am of the view that the lower Appellate Court was enjoined upon the obligation to refer to both the oral and documentary evidence. In my view, there is no reference to the cross-examination *ibid* of the plaintiff. Had it been so, the Court below would have an occasion to either agree or differ with the same as it has been a consistent stand of the defendant that it was a loan transaction and advance money of ₹ 3,00,000/- was taken as security and, in lieu thereof, blank stamp paper with thumb marked.

For the foregoing reasons, the judgment and decree of the lower Appellate Court is hereby set aside and the matter is remitted back to the lower Appellate Court to decide the appeal afresh in accordance with law.

Learned counsel for the parties and as well as the parties are directed to appear before the lower Appellate Court on 15.09.2016.

With the aforesaid observations, the appeal stands disposed of.

17.08.2016
yogesh

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No