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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4089-2011 (O&M)
Date of decision : 15.07.2016

Angoori

... Appellant

Versus

Johra Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. R.S. Malik, Advocate
for the respondent.

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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)

CM-11841-CII-2011

For the reasons stated in the application which is supported by an affidavit, the delay of 10 days in filing the appeal is condoned.

CM stands disposed of.

FAO-4089-2011 (O&M)

The appellant-defendant is aggrieved of the concurrent findings of fact, whereby the suit seeking specific performance of the agreement to sell dated 06.07.2004 has been decreed.

Mr. Harkesh Manuja, learned counsel appearing on behalf of the appellant-defendant has raised the following multi-fold arguments:-

The agreement to sell, aforementioned, was allegedly executed for the area measuring 3 kanals 19 marals against total sale consideration of ₹ 1,50,000/- & against the payment of ₹ 70,000/- as earnest money by Dharambir Singh. Dharambir Singh unfortunately died on 12.07.2004. The stipulated date for registration and execution of the sale deed was 10.05.2005. The respondent-plaintiff instituted a suit for permanent injunction on 18.10.2004 alleging alienation, thus, there was an alleged breach as cause of action to seek the specific performance had accrued, even if, the stipulated date had reached. In support of his contentions, he relies upon the ratio decidendi culled out by the judgment of Hon'ble Supreme Court rendered in ***“M/s Virgo Industries (Eng.) P. Ltd. V/s M/s Venturetech Solutions P. Ltd.” 2012 (4) RCR (Civil) 372***.

He submits that this Court while issuing the notice of motion had also taken into consideration that the part of the earnest money had been obtained by Dharambir Singh from Angoori, who is none-else, but the mother of Dharambir Singh and thus, the agreement was basically a loan agreement and the party had not intended to belie, therefore, discretion under Section 20 of Specific Relief Act, 1963 could not have been exercised. In pursuance to the order dated 23.01.2012 passed by this Court, a sum of ₹ 70,000/- along with interest @ 8% w.e.f. 06.07.2004 has already been deposited. All these facts have not been noticed and appreciated by both the Courts below, thus, there is illegality and perversity and urges this Court to formulate the substantial questions of law as drawn in the memorandum of appeal.

Mr. R.S. Malik, learned counsel appearing on behalf of the respondent-plaintiff submits that the agreement to sell has been proved through the testimony of one of the attesting witnesses, namely, Parmanand and the scribe. The appellant-defendant has not led any evidence to belie the signatures of Dharambir Singh, who has executed the sale deed, which were denied. There is no illegality and perversity in the findings, under challenge and urges this Court for dismissal of the appeal as no substantial question of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book and of the view that in order to appreciate the ratio decidendi culled out by the judgment of Hon'ble Supreme Court in ***"M/s Virgo Industries' case*** (supra), the best source of evidence for the appellant-defendant was to prove on record the previous suit for injunction which was dismissed as withdrawn and liberty was granted to file the suit for specific performance and having failed to do so, the Court did not have any occasion to examine this aspect and therefore, the judgment cited above would not apply to the facts and circumstances of the case. The appellant-defendant has failed to lead any evidence to belie the signatures of Dharambir Singh on the agreement to sell. It has also come on record in evidence that the plaintiff, Johra Singh had received a sum of ₹ 28,000/- from the defendant in lieu of some mortgage and said amount was paid to Dharambir, his son. The aforementioned transaction could not have been connected with present one, rightly so, the Courts below have exercised the discretion under Section 20 of the 1963 Act.

For the foregoing reasons, 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.

Accordingly, the appeal is dismissed.

The appellant-defendant shall be entitled to seek the refund of the amount deposited in terms of the order dated 23.01.2012 passed by this Court.

(AMIT RAWAL)
JUDGE

15.07.2016
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