

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

RSA No.1516 of 2012 (O&M)

Date of decision : 28.03.2016

Karan Singh

...Appellant

Versus

Neeraj Kumar and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. S.S. Dinarpur, Advocate for the appellant.

Mr. R.S. Mamli, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

CM No.4098-C of 2012

The application is allowed as deficiency in Court fees has been made good subject to all exceptions.

Applications stands disposed of.

CM No.4099-C of 2012

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

Application is allowed.

Main case

The appellant-defendant is aggrieved of the concurrent findings of fact, whereby suit for specific performance vis-a-vis agreement to sell dated 15.06.2005 in respect of land measuring 2 kanals 0 marlas, has been decreed.

Mr. S.S. Dinarpur, learned counsel appearing on behalf of appellant-defendant submits that both the attesting witnesses of the agreement to sell admitted that agreement to sell was executed before the Sub Registrar whereas factually it is incorrect. In fact appellant had taken loan of ₹40,000/- and appended signatures on blank stamp papers whereas respondent changed the amount of ₹40,000/- to ₹80,000/-. Khalil Ahmed PW3 who appeared into witness-box and proved the receipt of ₹25,000/-, the advancement of sum of ₹25,000/- on 01.02.2006 was also withstood in the cross-examination. On cumulative reading of the statements of witnesses, agreement to sell has not been proved, thus, lower Appellate Court exercised the discretion under Section 20 of the Specific Relief Act and thus urges this Court to formulate substantial question of law as culled out in the memorandum of appeal.

Mr. R.S. Mamli, learned counsel appearing on behalf of respondents-plaintiff submits that agreement to sell is witnessed by the son Suresh and his nephew i.e. PW2 Kamesh. Even agreement to sell has been proved through the Deed Writer by proving the register. Prior to filing of the suit, legal notice on 12.06.2006 was sent but the same was not duly replied. The respondent-plaintiff has proved the ingredients of Order 16 Rule 1(c) and rightly so, the discretion has been exercised and urges this

Court for dismissal of the present regular second appeal.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no substance in the appeal for the reasons that had in the written statement agreement to sell has indirectly been admitted, nothing prevented the appellant to specifically rebut the averments vis-a-vis the agreement to sell by reply to the notice. Having failed to do so, story of alleged loan coined for the first time in the written statement, is an afterthought. Once it is admitted that the agreement to sell is witnessed by his son Suresh and Kamesh nephew and as well as advancement of earnest money of ₹25,000/- and ₹80,000/- against the total sale consideration of ₹1,65,000/-, I am of the view that attempt has been made to non-suit the respondent-plaintiff whereas nothing of any sort could not deduced, irresistible conclusion qua transaction does not prove to be a loan as after the expiry of the target date on 15.06.2006, suit has been filed on 03.07.2006.

In view of the aforementioned, I do not find any illegality and perversity, much less, no substantial question of law arises for determination.

Dismissed.

28.03.2016

pawan

**(AMIT RAWAL)
JUDGE**