

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 3225 of 2012 (O&M)
Date of decision : March 31, 2016

Subeg Singh

..... Appellant

Versus

Net Ram

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Nandan Jindal, Advocate
for the appellant.

Mr. N. K. Manchanda, 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 finding of fact whereby the suit for possession by way of specific performance on the basis of agreement to sell dated 14.3.2001 in respect of house measuring 1750 sq.feet and plot No. 173 has been decreed.

Learned counsel appearing on behalf of the appellant-defendant submits that the agreement to sell was emphatically denied as it was a loan transaction for the reason that the original sale deed of the house in question was with the plaintiff. He further submits that the document has to be read as security and not an agreement to sell. All these aspects have been ignored by the

courts below. Even prior to the filing of the suit, legal notice dated 28.2.2003 (Ex. P-7) was sent to the respondent-plaintiff viz-a-viz re-payment of loan and asking for original sale deed. It is thereafter the suit has been filed on 16.4.2003. The alleged extensions are also viz-a-viz payment of loan and not qua part performance of the agreement to sell, thus, urges this court to formulate substantial questions of law as carved out in the Grounds of Appeal for adjudication by this Court.

Learned counsel appearing on behalf of the respondent submits that the concurrent finding of fact cannot be interfered with as the appellant had not been fair in coming to the court as well as during the pendency of the suit he has already sold the property vide sale deed dated 12.9.2006. Such an act of the appellant is not appreciable and shows mala fide on his part and prays for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no merit in the submissions of learned counsel for the appellant for the reason that the alleged payment of loan has not been proved as the witness in whose presence the loan has been re-paid had not appeared for cross-examination. The plea of owning a house is no longer sustainable in view of the sale deed dated 12.9.2006. The appellant has enjoyed the earnest money of ₹80,000/- for a considerable period of 13 years. Even if the same would have been kept in a FDR, it would have doubled and had become almost about ₹5 lacs. Even if this court dismisses the suit, in execution, the respondent-

plaintiff would be confronted with third party objections owing to the creation of third party rights and further undergo the agony of prolonged litigation. It is in these circumstances, I am of the view that respondent-plaintiff should be compensated in terms of money instead of decree for specific performance.

Accordingly, the judgments and decrees of both the courts below viz-a-viz specific performance of agreement to sell are modified and shall be treated as refund of ₹5 lacs as compensation including the element of earnest money to be paid to the respondent-plaintiff within a period of three months from the date of receipt of certified copy of this order, failing which the appellant-defendant shall be entitled to recover the same in accordance with law.

The appeal stands partly allowed in the aforementioned terms.

(AMIT RAWAL)
JUDGE

March 31, 2016
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