

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

-:-

219

RSA No.340 of 2012 (O&M)
Date of Decision: 15.1.2016.

TEJA SINGH

... APPELLANT

Versus

SATISH KUMAR AND ANR.

... RESPONDENTS

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ramesh Sharma, Advocate,
for the appellant.

Mr. Harsh Khunger, Advocate,
for the respondents.

-:-

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

CM-13117-C-2015

Prayer in this application is for bringing on record the LRs of Mohinder Singh-respondent No.2 who stated to have passed away on 30.5.2012. Counsel for respondent No.1 submits that he has no objection if the application is allowed but as respondent No.2 did not prefer an appeal during his lifetime, service of these legal representatives may not be required.

Counsel for the appellant states that Teja Singh, one of the legal representatives of Mohinder Singh is the appellant in the case and as such, there is no need to serve the remaining legal representatives of deceased -Mohinder Singh.

In view of the above, the application filed by the appellant is

allowed and the persons mentioned in para 2 of the application are brought on record as legal representatives of Mohinder Singh-respondent No.2 for the purpose of present lis. Amended memo of parties is taken on record.

CM-881-C-2012

Prayer in this application filed under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure is for permission to lead additional evidence in order to place on record the disability certificate Annexure A/1 in regard to respondent No.2-Sh. Mohinder Singh. Counsel for respondent No.1 has got no objection, if the application filed by the appellant is allowed and disability certificate Annexure A/1 is taken on record for disposal of appeal.

In view of the statement made by counsel for respondent No.1, the application is allowed and the appellant is permitted to tender into evidence disability certificate Annexure A/1 and the same is marked as Ex.DX.

RSA-340-2012

1) The present regular second appeal lays challenge to the judgment and decree dated 1.4.2011 passed by the District Judge, Jalandhar, dismissing the appeal preferred against the judgment and decree dated 27.11.2009 passed by the Additional Civil Judge (Senior Division) Nakodar, whereby the suit filed by respondent No.1/plaintiff for specific performance of the agreement to sell dated 9.11.2003 has been decreed.

2) The facts, in brief, are that Satish Kumar-respondent No.1 filed a suit for possession by way of specific performance of agreement dated 9.11.2003 in respect of house measuring 20 marlas, detailed in the head note of the plaint and in the alternative prayed for recovery of Rs.4,25,000/-. The

plea of the respondent is that the appellant and his brother Mohinder Singh sons of Hazara Singh entered into agreement for sale on 9.11.2003, received Rs.4 lacs as earnest money, agreed to execute and register the sale deed on 8.6.2004 on receipt of balance sale consideration. Respondent No.1 always remained ready and willing to perform his part of the contract but the appellant and his brother failed to honour the agreement.

3) The appellant and his brother Mohinder Singh filed a joint written statement contesting the claim of respondent No.1. They raised preliminary objections in regard to maintainability of the suit, locus standi of respondent No.1/plaintiff to file the suit, incorrect valuation of the suit and property not being properly described. They denied the agreement to sell dated 9.11.2003 having been executed by them with the averments that the alleged agreement is the result of fraud, misrepresentation and is without consideration. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

4) Respondent No.1 preferred replication reiterating his stand taken in the plaint while controverting the preliminary objections raised by the appellant and respondent No.2.

5) The controversy between the parties led to framing of following issues by the learned trial Court:-

- 1. Whether plaintiff is entitled for possession by way of specific performance of the agreement to sell dated 9-09-2003 in respect of the house in dispute as prayed for? (OPP)*
- 2. Whether plaintiff was ready and willing and still ready and willing to perform his part of contract? (OPP)*
- 3. Whether the plaintiff is entitled for the recovery of Rs.425000/- as prayed for? (OPP)*
- 4. Whether suit of the plaintiff is not maintainable?*

(OPD)

5. Whether plaintiff has no locus standi to file the instant suit? (OPD)

6. Whether the plaintiff is estopped by his own act & conduct from filing the captioned suit? (OPD)

7. Whether the instant suit has not been properly valued for the purpose of court fee and jurisdiction? (OPD)

8. Relief.

6) The trial Court permitted the parties to adduce evidence in support of their respective claims. Respondent No.1 appeared in the witness box and examined Sukhdev Kumar Sood (PW1), Balihar Singh (PW3) and Rajinder Singh (PW4).

7) To rebut evidence of respondent No.1, Teja Singh appellant/defendant No.2 examined himself.

8) The learned trial Court, on appreciation of the pleadings of the parties, evidence adduced and rival submissions made by their respective counsel determined issues No.1, 2, 5 and 6 taken up jointly in favour of respondent No.1 whereas issue no.3 was disposed of being redundant. Issue no.4 and 7 were answered in favour of respondent no.1 and as a consequence, the suit of respondent no.1 was decreed for specific performance of the agreement in question.

9) Feeling aggrieved against the judgment and decree dated 27.11.2009 passed by the Civil Judge (Senior Division) Nakodar, Teja Singh-appellant alone preferred an appeal which did not find favour with the learned District Judge, Jalandhar and as a result, the judgment and decree passed by the learned trial Court was affirmed.

10) Still feeling dissatisfied, the present regular second appeal has

been preferred by Sh.Teja Singh–appellant/defendant No.2.

11) Learned counsel for the appellant has assailed findings recorded by the Courts below primarily on two counts. The first submission made by counsel is that as per the agreement dated 9.11.2003, the vendors agreed to sell the suit property for a sale consideration of Rs.4,25,000/- and an amount of Rs.4 lacs had been paid by the proposed vendee towards earnest money. Had it been so, there was no occasion for the parties to fix the date for execution and registration of the sale deed after a period of 4 months i.e. on 8.1.2004. In the alternative, it is submitted that no such payment of Rs.4 lacs was made by the vendee as he has admitted during his cross-examination that no payment was made by him at the time of deal and money was paid only for purchase of stamp papers.

12) Counsel for the appellant has made a vain attempt to argue that as Mohinder Singh-respondent No.2 was blind at the time of alleged agreement executed in September 2003, the agreement in question is the result of fraud played upon the appellant and his brother. For this purpose, counsel has referred to the disability certificate Ex.DX which has been allowed to be produced by way of additional evidence by this Court.

13) Counsel for respondent No.1 has supported the judgment passed by the trial Court with the submissions that there is no merit in the contentions of the appellant much less the grounds taken up in the appeal raising any substantial question of law for adjudication, in an appeal preferred under Section 100 CPC. It is further argued that the agreement to sell propounded by respondent No.1 has been duly proved and there is a specific recital in the agreement that an amount of Rs.4 lacs out of sale

consideration of Rs.4,25,000 was paid at the time of execution of agreement on 9.11.2003. It is further argued that disability certificate in respect of Mohinder Singh was issued in the year 2011 and the same does not refer to any such fact that Mohinder Singh was blind in the year 2003 as has been sought to be contended by the appellant. Another submission made by counsel is that Mohinder Singh did not file any appeal against the judgment and decree passed by the trial Court which shows that Mohinder Singh had no grievance to express.

14) I have heard counsel for the parties and perused the records. The mere fact that there was gap of four months in between the date of execution of the agreement and the date fixed for registration of the sale deed does not indicate that payment of Rs.4 lacs was not made at the time of agreement when otherwise there is no such plea raised by the appellant and his brother that the agreement was not intended to be a transaction for sale of property or it was executed with a different intention. So far as the plea in regard to non-payment of Rs.4 lacs by reference to the statement of respondent No.1 in cross-examination, the same is misconceived and merits outright rejection. The stamp papers for execution of the sale deed were purchased on 8.11.2003 but the agreement was reduced into writing on 9.11.2003 on which date the earnest money of Rs.4 lac had been paid to the vendors. Satish Kumar in his cross-examination has deposed that on the date of deal being finalized, money for purchase of stamp papers only was given and no other payment was made. The said statement refers to 8.11.2003, the date on which the stamp papers were purchased and not to the date on which the agreement of sale Ex.P1 was executed between the

parties.

15) The appellant and his brother Mohinder Singh have raised a defence plea that the agreement is the result of fraud. As per the settled position in law, a party who alleges fraud has to detail the facts constituting the fraud and has to substantiate those allegations during trial. The appellant in the written statement besides raising a vague plea that agreement is the result of fraud did not give any particulars thereof. This apart, there is no evidence on record to establish that Mohinder Singh, brother of the appellant was blind at the time of execution of agreement on 9.11.2003. Mohinder Singh did not appear in the witness box to state on oath that he was suffering from any problem of vision much less being blind in the year 2003. Not only this, Mohinder Singh never preferred any appeal against the judgment and decree passed by the trial Court. Analysed from any angle, no substantial question of law arises for adjudication nor any error much less illegality is found in the consistent findings recorded by the Courts below, as to call for intervention.

16) In view of what has been discussed hereinbefore, finding no merit, the appeal is dismissed leaving the parties to bear their own costs. The judgments and decrees passed by the Courts below are affirmed.

(Rekha Mittal)
Judge

January 15, 2016
SwarnjitS