

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3649 of 2012 (O&M)

Date of Decision: 05.04.2016

Sajjan Singh

... Appellant(s)

Versus

Manohar

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Rajbir Sehrawat, Advocate
for the appellant(s).

Mr. S.K.Yadav, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present regular second appeal against concurrent findings of facts having been recorded by both the Courts below in a suit for specific of agreement of sale dated 5.12.2005, having been dismissed by the Court of first instance and first appeal dismissed by the Appellate Court.

For the sake of convenience, parties are being referred to as per their status before the Court of first instance.

Relevant facts of the case that plaintiff filed a suit for

specific performance of agreement of sale of a double storeyed house. As per agreement dated 5.12.2005 total sale consideration was fixed to be ₹ 6,50,000/- and the target date fixed for execution of the sale deed was 7.4.2006. Plaintiff was always ready and willing to perform his part of the agreement and despite requests, defendant refused to do so. As such, necessity of the suit.

Defendant contested the suit *inter alia* taking the plea that no such agreement was ever executed nor any amount was received nor the possession was delivered. Thus, there was no question for being ready and willing to perform his part of agreement and prayed that suit of the plaintiff be dismissed.

On these facts, the Court of first instance settled the issues and parties were put to trial. The Court of first instance, after recording evidence of the parties and appreciation thereof, dismissed the suit of the plaintiff. First appeal having been filed by the plaintiff was also dismissed by the lower Appellate Court and as such present regular second appeal before this Court.

Learned counsel for the appellant submitted that the Courts below dismissed the suit of plaintiff for specific performance of agreement of sale dated 5.12.2005 merely on the basis of assumptions and presumptions. As per learned counsel for the appellant, it is settled proposition of law that agreement of sale of immovable property is not required to be proved strictly like a Will but the same can be proved by examining a party to the agreement and one of the attesting witness. Plaintiff has been able to prove his case by examining attesting witness

Mehar Singh, who appeared as PW.2. Apart from that, plaintiff examined Gulshan, Clerk of Sh Shyambir Singh, Advocate as PW.3 but the Court below still returned the finding that agreement of sale was not executed. The Court below has not given any reason that the attesting witness was not believed. The Courts below disbelieved the written agreement of sale on the ground that there was difference of ink used in the signatures at two different places. As per learned counsel for the appellant, that was quite natural if party uses two different pens and appends his signatures after some time. But on that point, findings could not be recorded that the signatures are not of the same pen, which are otherwise proved on the file by examining the attesting witness. The said findings recorded by the Courts below are liable to be set aside by accepting the appeal.

While arguing on this point, learned counsel for the respondent submitted that the Courts below have already returned concurrent findings of facts after appreciating the entire evidence. The said findings do not call for any interference because there is no substantial question of law involved. Otherwise also, execution of the agreement has been denied by the defendant and making of payment. The Courts below rightly observed that there were suspicious circumstances which lead to the irresistible conclusion that agreement was not duly executed. In the present case, stamp papers were purchased on 1.11.2005, whereas the agreement is dated 5.12.2005. One fails to understand how anybody can purchase stamp papers for execution of sale deed even without execution of agreement of sale.

PW.3 Gulshan has not uttered any word about the execution of agreement. The testimony of PW.2 Mehar Singh has rightly been discarded by the Courts below; present appeal is without any merit and the same be dismissed.

Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of considered view that both the Courts below appreciated oral as well as documentary evidence and rightly observed that evidence adduced by the plaintiff is not believable and execution of agreement is suspicious one. The Courts below have given detailed reasons for arriving at such a conclusion. The Court below was right in saying so that one fails to understand how the entire sale consideration could be paid on the date of execution of agreement and that is deviation from the general practice. Even the entire payment was made without any receipt and same is not believable. Possession was allegedly delivered on the same day. The Courts below rightly observed that as execution of the agreement was denied by the defendant, it was for the plaintiff to prove due execution thereof. The Courts below rightly disbelieved the testimony of PW.2 Mehar Singh. The suspicious circumstance, as observed by the Courts below and as detailed above, certainly makes out a case that plaintiff failed to prove due execution of the agreement (Ex.P1) and the Court below rightly disbelieved the same. The concurrent findings of facts having been recorded by both the Courts below do not call for any interference by this Court. There is absolutely no substantial question of law involved in the present case.

As per view taken by Hon'ble the Supreme Court in ***Deity Pattabhiramawami v. S. Hanymayya and Others AIR 1959 SC 57***, the provisions of Section 100 CPC are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground of finding of fact. As per view taken by Hon'ble the Apex Court in ***Commissioner, Hindu Religious & Charitable Endowment v. P. Shanmugama & Others JT 2005(1) SC 201*** and ***Biswanath Ghosh (Dead) by LRs and Others v. Gobinda Ghosh alias Gobindha Chandra Ghosh & Others AIR 2014 SC 1582***, second appeal cannot be entertained if there is no substantial question of law involved therein.

In view of the above, present appeal is not maintainable as per the provisions of Section 100 of the Code of Civil Procedure, 1908 and the same stands dismissed.

(Shekher Dhawan)
Judge

April 5, 2016
"DK"