

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1174 of 2013 (O&M)

Date of Decision: 27.05.2016

Champa and Others

... Appellant(s)

Versus

Roop Chand

... 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. J.S.Ghuman, Advocate
for the appellant(s).

Mr. Johan Kumar, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present regular second appeal, filed by the defendants, against concurrent findings of facts having been recorded by the Courts below in suit for specific performance of the agreement of sale dated 27.6.2005, which was decreed by the Court of first instance and first appeal having been dismissed by the first 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 had filed suit for specific

performance of agreement of sale dated 27.6.2005 in respect of suit of land for a total sum of ₹ 81,37,500/-, out of which ₹ 11,00,000/- has been paid as earnest month. The target date for execution of the sale deed was fixed to be 28.9.2006. Another agreement was also executed regarding payment of full sale consideration and receipt ₹ 70,37,500/- was executed in favour of the plaintiff. Defendants got deposited a sum of ₹ 70,37,500/- in their bank account on 28.9.2006. Plaintiff has always been ready and willing to perform his part of agreement but defendant never came forward despite requests and as such necessity of the suit.

Defendants contested the suit *inter alia* taking the plea that agreement of sale was for ₹ 3,00,00,000/-, but the amount of sale consideration was mentioned less in order to avoid payment of stamp duty. The sale consideration was settled at ₹ 3,00,00,000/- and plaintiff expressed his inability to make the entire payment and as such sale deed was not executed. Plaintiff had committed fraud and prayed that suit is liable to be dismissed.

On these facts, issues were framed by the Court of first instance and parties were put to trial. The Court of first instance, after recording of the evidence and appreciation thereof, decreed the suit of the plaintiff and first Appellate Court dismissed the appeal. As such, present regular second appeal before this Court.

Learned counsel for the appellants submitted that agreement of sale was in fact for ₹ 3,00,00,000/- and the market value of the suit property was also of ₹ 3,00,00,000/- and plaintiff was not ready to make payment of the actual sale consideration and the findings recorded by the Courts below

be set aside and present appeal be accepted.

Learned counsel for the respondent submitted that the Courts below have already appreciated the entire evidence and recording of concurrent findings of facts and there being no substantial question of law involved in the present regular second appeal, the same is not maintainable and it be dismissed.

Having considered the submissions made by learned counsel for the parties and appraisal of the record of the case, this Court is of the considered view that the Courts below have already considered the entire controversy and pleas taken by the appellants including the plea that market value of the suit property was ₹ 3,00,00,000/- and agreement of sale was for total sale consideration of ₹ 3,00,00,000/-. But the same has been negated by the Courts below. Otherwise also, as per the provisions of Section 91 of the Indian Evidence Act, 1872, if the terms of any agreement have been reduced into writing, no oral evidence shall be given in proof of the terms of such contract, grant or other disposition of property or of such matter, except the document itself. Otherwise, there being concurrent findings of facts having been recorded by the Courts below and there being no substantial question of law, present appeal is not maintainable.

In ***Deity Pattabhiramaswami v. S. Hanymayya and Others*** AIR 1959 SC 57, the Hon'ble Apex Court observed that the provisions of Section 100 CPC are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground of findings of fact. 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, the Hon'ble Apex Court has taken a view that second appeal cannot be entertained if there is no substantial question of law involved therein.

Accordingly, 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**

May 27, 2016
“DK”