

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1536 of 2013 (O&M)

Date of Decision: 26.02.2016

Charan Singh

... Appellant(s)

Versus

Santokh Singh

... 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. L.S.Sidhu, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal having been filed by the defendant is against judgment & decree dated 21.1.2013, passed by the First Appellate Court, whereby appeal was partly accepted and impugned decree was passed in a suit for specific performance, whereas the Court of first instance dismissed the suit for proprietary possession as mortgagee by way of specific performance of agreement dated 10.4.2003.

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-Santokh Singh had filed suit for proprietary possession as mortgagee by way of specific performance of agreement dated 10.4.2003 of the suit land. As per plaintiff, payment of ₹ 74,000/- was made to the defendant on the date of agreement and the total sale consideration was ₹ 80,000/-. The stipulated date for execution and registration of the mortgage deed was 5.4.2006 and in case of default in payment by the defendant, plaintiff would be entitled to enforce the agreement through Court of law and to recover ₹ 1,28,000/-. Defendant contested the suit taking the plea that plaintiff concealed the material facts from the Court and there was no cause of action. Defendant also took the plea that neither agreement of mortgage of the suit land was executed on 10.4.2003 nor earnest money of ₹ 74,000/- was received and plaintiff was not entitled to enforce the agreement and to recover ₹ 1,28,000/-. Defendant had never delivered possession of the suit land. Rather defendant is in possession of the same. As defendant never entered into agreement with the plaintiff, so there was no question of readiness and willingness to perform his part of the agreement of mortgage and prayed that present suit be dismissed.

On these facts, the Court of first instance settled the issues and after recording of evidence by both the parties and appreciation thereof, decreed the suit of the plaintiff. Plaintiff preferred first appeal; First Appellate Court partly allowed the same; judgment & decree of the trial Court was set aside and the suit of the plaintiff was decreed with

costs for recovery of ₹ 74,000/- with interest at the rate of 9% per annum from the date of execution of agreement Ex.P2 till the filing of the suit and at the rate of 9% per annum on the principal amount of ₹ 74,000/- during the pendency of the suit. Hence, defendant is before this Court by way of present regular second appeal.

Learned counsel for the appellant mainly submitted that judgment & decree dated 21.1.2013 passed by the First Appellate Court is liable to be set aside because as per agreement Ex.P2, appellant Charan Singh was owner of 16 kanals of land but as per jamabandi, he was owner in possession of land measuring 2 kanals 13 marlas. Another co-owners are provincial Government as well as Nirmal Singh and Resham Singh. More so, plaintiff failed to prove the execution of agreement Ex.P2 to be a valid document. Learned counsel for the appellant submitted that relationship between the appellant and respondent that appellant used to sell his sugarcane crop to the respondent, who used to obtain his signatures on blank papers and the appellant opposed those documents and the Court below has not considered these facts and as such, findings recorded by the Court below are liable to be set aside.

Having considered the submissions made by learned counsel for the appellant and appraisal of the record, this Court is of the considered view that the Court of first appeal has rightly taken a view that present appellant has taken the plea of obtaining his thumb impression on the blank papers on the pretext of preparing one receipt just to avoid his contractual liability. Had there been case of forgery and

misrepresentation, appellant must have lodged some complaint with the police or in the Court but that has not been done. Law on this point is settled that anybody who alleges fraud, must prove the same because it is very easy to allege a fraud but the requirement of law is that plea of fraud must be proved like a charge in the criminal case. But that has not been done in the present case. More so, appellant failed to examine any expert witness after obtaining report on the basis of comparison of admitted thumb impression with thumb impression on the document Ex.P2. Probably, appellant was knowing fully well that he has put his thumb impression of his own. Otherwise, payment of ₹ 74,000/- made to the appellant has been proved on the file and the Court of first appeal has rightly recorded those findings on the basis of oral as well as documentary evidence. The Court below has rightly returned the findings that it was a loan transaction and on the basis of document Ex.P2, present appellant had taken a loan of ₹ 74,000/- from the plaintiff and thumb marked the said agreement and later on failed to repay the said amount. Concurrent findings, recorded by the Court below, are based on facts of the case and evidence available on the file. The said findings do not call for any interference. Thus, present appeal, being without any merit, stands dismissed.

(Shekher Dhawan)
Judge

February 26, 2016

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