

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1888 of 2013 (O&M)

Date of Decision: 21.04.2016

Joginder Singh

... Appellant(s)

Versus

Paramjit Kaur and Others

... 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. Raj Kumar Kakkar, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal, filed by the plaintiff, against concurrent findings of facts having been recorded by both the Courts below.

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

Relevant facts for the purpose of decision of the present appeal that plaintiff had filed suit for specific performance of agreement of sale dated 6.7.1996, with respect to the suit land and the total sale consideration was ₹ 1,30,000/-. Earnest money of ₹ 1,00,000/- was

paid and sale deed was to be executed on or before 12.12.1996. Jaswant Singh died on 22.9.1996 and defendants No.1 to 4 are his legal heirs. As per plaintiff, he was always ready and willing to perform his part of agreement. But the defendants failed to get the sale deed executed and as such, necessity of the suit.

Defendants contested the suit *inter alia* taking the plea that no agreement of sale was ever executed and the agreement, if any, is a forged and fabricated document. There was no question of receipt of earnest money by Jaswant Singh and prayed that suit be dismissed.

On these facts, the Court of first instance settled the issues and recorded evidence of both the parties. After appreciating the evidence, the Court of first instance dismissed the suit on the ground that Jaswant Singh never intended to transfer his property or executed agreement of sale (Ex.P1). Plaintiff preferred appeal before the first Appellate Court, which was dismissed and as such present regular second appeal before this Court.

Learned counsel for the appellant submitted that the Court below dismissed the suit without any basis. Plaintiff's version stood proved as per statements of PW.2 Tirath Singh and PW.3 Jeet Singh. The passing of earnest money was also proved but the Court below simply dismissed the suit and disbelieved the testimonies of PW.2 Tirath Singh and PW.3 Jeet Singh on the basis of minor contradictions. Both the attesting witnesses were examined as PW.2 & PW.3, respectively. More so, if the plaintiff had fabricated the agreement, he would not have waited for five months before execution of agreement and

stipulated period to be fixed for execution and registration of the sale deed and the Court below completely ignored these facts and the first Appellate Court has not examined these issues. More so, plaintiff was always ready and willing to perform his part of agreement and on the stipulated date, plaintiff reached the office of Sub Registrar along with balance sale consideration as well expenses required for registration of the sale deed. Application (Ex.P3) was moved by the plaintiff for marking his presence and the Court below completely ignored this fact and resulted into erroneous finding and the said findings be set aside.

Having considered the submissions made by learned counsel for the appellant, this Court is of the considered view that both the Courts below have already appreciated the entire material and evidence available on the file and recorded concurrent findings of facts. While recording the findings, the Court of first instance appreciated the testimony of defendant No.1-Paramjit Kaur, who appeared in the witness box as DW.3. More so, Dr. Vikram Raj Singh Chauhan, Handwriting & Finger Print Expert was examined as DW.5, who had submitted his report on the basis of admitted signatures of Jaswant Singh i.e. Ex.D1 to Ex.D3. The Court below also observed that Jaswant Singh was not in need of money so as to transfer his entire property in favour of Joginder Singh, who is plaintiff in the present case. The said concurrent findings of facts having been recorded by both the Courts below do not call for any interference and no substantial question of law involved in the present appeal.

As per view taken by Hon'ble the Supreme Court in ***Deity Pattabhiramswami 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 discussions made above, present appeals 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 21, 2016

"DK"