

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2618 of 2013 (O&M)

Date of Decision: 19.05.2016

Nand Singh

... Appellant(s)

Versus

Gian 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. M.S.Kang, Advocate
for the appellant(s).

Mr. R.D.Bawa, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present regular second appeal, filed by the defendant, against concurrent findings of facts having been recorded by the Courts below, whereby suit of the plaintiff for specific performance of agreement of sale dated 30.11.2006 was decreed by the Court of first instance but instead of grant of relief of specific performance, decree for recovery of ₹ 7,00,000/- along with interest was passed. Plaintiff preferred an appeal before the first Appellate Court, who modified the

judgment & decree, passed by the Court of first instance and decreed suit of plaintiff for possession by way of specific performance of agreement of sale dated 30.11.2006.

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 possession by way of specific performance of agreement of sale dated 30.11.2006 executed by the defendant in favour of plaintiff in respect of the suit land. In the alternative, for recovery of ₹ 7,50,000/- which included ₹ 3,50,000/- already paid by the plaintiff as earnest money and ₹ 3,50,000/- as penalty and ₹ 50,000/- for damages on account of loss of bargain. The alleged agreement was to be executed on or before 15.6.2007 on payment of remaining sale consideration. As per plaintiff, he always remained ready and willing to perform his part of agreement and for that purpose, he approached the defendant also to get the sale deed executed but to no avail and as such suit before the Court of first instance.

Defendant contested the suit *inter alia* taking the plea that earlier he had entered into an agreement of sale of the suit property on 16.11.2004 in favour of Harbhajan Singh son of Suba Singh for sale of land at the rate of ₹ 4,00,000/- per acre. Harbhajan Singh filed suit against the defendant and the same was compromised and resultantly, the defendant executed sale deed in favour of Harbhajan Singh. As per defendant, he had never executed agreement of sale in favour of the

plaintiff and he had not received any earnest money from him. The agreement is the result of fraud and forgery and plaintiff might have converted the papers into agreement of sale because of illiteracy of defendant and prayed that suit be dismissed.

On these facts, the Court of first instance settled the issues and both the parties were asked to lead their respective evidence and the Court of first instance recorded the findings that plaintiff has been able to prove due execution of the agreement of sale (Ex.P1) by defendant on receipt of earnest money, whereas defendant failed to prove that agreement of sale was the result of fraud. More so, plaintiff had shown his readiness and willingness to perform his part of agreement of sale particularly when he had filed the civil suit before the Court below. However, while recording findings on issues No. 4, 6, & 7 regarding relief of specific performance, the Court of first instance passed the decree for payment of ₹ 7,50,000/- mainly on the ground that earlier agreement dated 16.11.2004 was in favour of Harbhajan Singh and the sale deed has been executed. The Court of first instance decreed the suit for recovery in lieu of decree for possession for execution of the sale deed in favour of the plaintiff. The first Appellate Court affirmed the findings regarding due execution of the agreement and receipt of earnest money. However, as regard to the relief of specific performance, first Appellate Court observed that there was no evidence regarding execution of earlier agreement dated 16.11.2004 by the defendant in favour of Harbhajan Singh. The said sale deed was rightly executed in favour of Harbhajan Singh on 29.10.2007 i.e. during

pendency of the suit because the suit was filed on 24.10.2006. The Court below recorded the observation that Harbhajan Singh and Nand Singh had connived with each other just to defeat the rights of the present plaintiff and that too was with malafide intentions and as such reversed the findings on the remaining issues regarding relief clause and decreed the suit of the plaintiff for possession by way of specific performance of agreement dated 30.11.2006. Feeling aggrieved of the said judgment & decree, defendant approached this Court by way of present appeal.

Learned counsel for the appellant mainly contended that even if the entire case of plaintiff is found to be correct, as per agreement dated 30.11.2006, payment was to be made **on or before 15.6.2007 on payment of remaining sale consideration**. As such, agreement of sale dated 30.11.2006 has already been rescinded on 15.6.2007 as the payment was not made on or before 15.6.2007 in terms of the agreement of sale and plaintiff was not entitled to seek specific performance of the agreement and the judgment & decree, passed by the Courts below, are liable to be set aside.

While arguing on these points, learned counsel for the respondent submitted that the first Appellate Court has already appreciated all these facts and recorded findings that execution of the agreement of sale has been duly proved and receipt of earnest money is also not disputed. The only purpose of defendant was just to defeat the legal rights of the plaintiff arising out of agreement of sale dated 30.11.2006. Even the suit was filed on 11.9.2007, whereas the alleged

judgment & decree passed on the basis of compromise is dated 15.12.2007. As such, present appeal is without any merit and the same deserves dismissal.

Having considered the submissions made by learned counsel for the parties; appraisal of the record of the case and grounds of appeal, this Court is of the considered view that most of the facts are not disputed that agreement of sale dated 30.11.2006 was duly executed by the defendant and the same has been duly proved during trial by the plaintiff by examining himself as PW.1, besides statements of Amrik Singh (PW.2) and Davinder Singh (PW.3). More so, defendant had admitted his thumb impression on agreement of sale (Ex.P1). The contention was raised before the Court of first instance that agreement (Ex.P1) was result of fraud and misrepresentation and that was never executed at the instance of defendant. That plea has rightly been declined by the Courts below as there was no supporting material available on the file. The said findings do not require any further interference by way of present regular second appeal. Now the main question comes whether plaintiff was entitled to seek relief of possession by way of specific performance of agreement of sale (Ex.P1) or the Court of first instance was justified in granting alternative relief of payment of amount. It is settled principle of law that in case of agreement relating to immovable property, the intention of the parties should be carried out and in case of failure of either of the parties to perform their respective parts, the Court should order for specific performance of agreement and not to grant relief of recovery of money

because transaction involving immovable property cannot be compensated in terms of money only. The Court of first instance was justified in passing decree for recovery of money if the defendant had come with clear cut averments that agreement (Ex.P1) was duly executed but there were certain circumstances which compelled him not to pass decree for specific performance but in alternative to grant compensation as ordered by the Court below. However, that is not the case before the Courts below. Defendant filed written statement denying the execution of the agreement and thereafter led evidence to prove the same but failed to prove the same before the Courts below. More so, defendant does not make out a case whether the Court should exercise its powers under Section 20 of the Specific Relief Act, 1963 to grant relief of money decree only in lieu specific performance of the agreement. The reasons are because defendant had tried to play fraud with the Courts even. The sale deed was executed after execution of the agreement (Ex.P1). Thereafter, the sale deed was executed in favour of Harbhajan Singh during pendency of the suit filed by plaintiff Gian Singh because the suit was filed on 11.9.2007 and the Court decree, on the basis of compromise, was dated 15.12.2007. The first Appellate Court has rightly observed that the said act on the part of the defendant was just because of connivance between Harbhajan Singh and Nand Singh to defeat the legal rights of the plaintiff on the basis of agreement of sale dated 30.11.2006.

Learned counsel for the appellant has also taken the plea that agreement had come to an end on 15.6.2007 because the payment

was to be made on or before 15.6.2007 and the day of 15.6.2007 was not inclusive. This plea of defendant/appellant is legally not tenable because if the defendant had put sincere efforts for execution of the sale deed in terms of agreement (Ex.P1), he should have issued notice on 15.6.2007 or any date thereafter at least. But that has not been done. Rather, the defendant got the sale deed executed in favour of Harbhajan Singh on the basis of compromise and that is apparently an act of active connivance between Harbhajan Singh and Nand Singh so as to defeat the legal rights of the plaintiff. Undisputedly, agreement of sale dated 30.11.2006 was duly executed. The earlier agreement dated 16.11.2004 has not been proved on the file. The sale deed in favour of Harbhajan Singh had been executed during pendency of the suit and there was no justified ground for the Court of first instance to pass decree for alternative relief and the said findings were duly reversed on that point by the first Appellate Court, though confirming the findings recorded by the Court of first instance regarding execution of agreement and receipt of earnest money. Thus, no substantial question of law is involved in the present appeal.

As per view taken by Hon'ble the Supreme Court in ***Deity Pattabhiramaswami 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**

May 19, 2016
"DK"