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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 11.01.2016

1. RSA-3250-2013 (O&M)

Gurdev Singh

...Appellant

Versus

Gurdeep Singh (deceased through LRs) and another

...Respondents

2. RSA-3079-2014 (O&M)

Gurdeep Singh (deceased through LRs)
Rajinder Kaur and others

...Appellants

Versus

Satish Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.K. Chauhan, Advocate
for the appellant (in RSA-3250-2013).

Mr. C.L. Sharma, Advocate
for the respondents(in RSA-3250-2013) and
for the appellants (in RSA-3079-2014).

Mr. R.P. Singh Ahluwalia, Advocate
for the respondent (in RSA-3079-2014).

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two regular second appeals one bearing No.RSA No.3250 of 2013 arising out of the Civil

Suit bearing No.463 dated 07.04.2003 titled as "Gurdev Singh Vs Gurdeep Singh and another" (herein after called as Second Suit) whereas other RSA No.3079 of 2014 arising out of the Civil Suit No.61 dated 17.07.2002 titled as "Satish Kumar Vs Gurdeep Singh" (herein after called as First Suit). In the First Suit, an agreement to sell is dated 20.12.2001 whereas in the Second Suit, the agreement to sell is dated 30.03.2001 in respect of the same land alleged to have been agreed to be sold to the vendees, by Gurdeep Singh-vendor, against the receipt of total sale consideration. The total sale consideration in respect of the agreement to sell dated 30.03.2001 was ₹ 1,00,000/- whereas a sum of ₹ 80,000/- + ₹ 10,000/- on the date of the extension had allegedly been paid to the Gurdeep Singh-vendor, whereas in other case, the total sale consideration was ₹ 4,50,000/- and the earnest money of ₹ 2,00,000/- is stated to have been paid to Gurdeep Singh-vendor. The trial Court decreed the Second Suit on the ground that the appellant-plaintiff has proved the execution of the agreement to sell, whereas, the lower Appellate Court set aside the judgment and decree on the premise that it was a loan agreement and, therefore, did not grant the discretionary relief under Section 20 of the Specific Relief Act. In the First Suit, the lower Appellate Court decreed the suit and it is the appellant-defendant-vendor Gurdeep Singh who has approached this Court.

Mr. R.K. Chauhan, learned counsel appearing on behalf of the appellant-plaintiff, viz-a-viz in Second Suit, submits that the lower Appellate Court has committed illegality and perversity in dismissing the suit by ignoring the fact that the agreement to sell dated 30.03.2001 has been proved through examination of attesting witness and scribe, much less, the affidavit of marking the presence on 30.09.2001 i.e. the extended date. Nonetheless, even the preceding to the filing of the suit and the legal notice dated 21.08.2002 was also served. The agreement to sell entered into by the Gurdeep Singh-vendor in favour of the subsequent vendee namely Satish Kumar is dated 20.12.2001, i.e. of a subsequent date, therefore, the previous agreement to sell would prevail as its due execution has been proved., thus, the following substantial questions of law would arise for determination of this Court:

i) Whether the judgment and decree of the lower Appellate Court in not granting the discretionary relief under Section 20 of the Specific Relief Act is sustainable or not?

ii) Whether impugned judgment and decree suffer from perversity, much less, illegal filed?

Mr. C.L. Sharma, for the appellant-vendor-Gurdeep Singh (in RSA No.3079 of 2014) and respondent No.1 (in RSA No.3250 of 2013) submits that there is no illegality and perversity in the judgment and decree of the lower Appellate Court as it has been conclusively proved on record that it was a loan transaction and there was no intention to sell, purpose of obtaining the land. The agreement to sell was entered into as a security for the purpose of obtaining loan which has been sought to be executed by seeking a specific performance through the intervention of the Court, vis-a-viz, the finding rendered by Courts below (in RSA No.3079 of 2014), he submits that the original agreement to sell dated 20.12.2001 has not been proved on record, much less, no efforts have been made to prove the same by way of secondary evidence. He further submits that the lower Appellate Court has erroneously non-suited the appellant by holding that no efforts have been made to prove the original agreement to sell, whereas, an application, in this regard, had already been moved and Satish Kumar-Vendee, in his First Suit denied its existence on the premise that it had been lost.

Mr. R.P. Singh Ahluwalia, learned counsel appearing on behalf of the subsequent vendee-Satish Kumar, submits that no objection was raised while exhibition of the agreement to sell. The Courts below have concurrently rendered a finding in favour of the subsequent vendee-Satish Kumar.

I have heard learned counsel for the parties and appraised the paper book.

The appellant-plaintiff, in Second Suit has proved the execution of the agreement to sell dated 30.03.2001 being a subsequent agreement by examining the attesting witness and proved on record the legal notice dated 21.08.2002 showing the readiness and willingness on his part. The finding rendered by the lower Appellate Court that it was the loan transaction does not have any substance as nothing has surfaced through cross-examination on testimony of the aforementioned witnesses viz-a-viz, the execution of the agreement to sell being given as a security in lieu of alleged obtaining of the loan. The agreement to sell dated 20.12.2001, in the First Suit, is a subsequent agreement and original agreement has not seen the light of the day. No doubt, the vendor has not objected to the exhibition but the fact remains the original agreement to sell, once had been lost, as per the reply filed to the application seeking production of the document, was required to be proved through the assistance of case by moving appropriate application under Section 65 of the Indian Evidence Act. It is a classic case, where the vendor has induced the vendees in entering into two agreement to sell despite the fact that the property stood mortgaged, which has not been redeemed. He has not enjoined the possession but retained the earnest money. Since, the plaintiff in Second Suit has proved the execution of the agreement and the agreement is of prior in time to the agreement to sell set up by the subsequent vendee-Satish Kumar and the readiness and willingness has also been proved whereas on the contrary, the original agreement to sell dated 20.12.2001, in First Suit has not been proved, therefore, the Second Suit is liable to be decreed.

In view of the aforesaid observations, judgment and decree of the lower Appellate Court passed in the Second Suit, is hereby set aside and the substantial question of law noticed above is answered in favour of the appellant and against the respondent No.1-Gurdeep Singh whereas, the judgment and decree rendered by both the Courts below in First Suit, is modified and the plaintiff-

Satish Kumar is entitled to refund of the earnest money of ₹ 2,00,000/- along with the interest @ 18% from the date of the payment till its realization.

Accordingly, the appeal bearing RSA No.3250 of 2013 is allowed whereas, the appeal bearing RSA No.3079 of 2014 is dismissed.

(AMIT RAWAL)
JUDGE

11.01.2016
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