

In the High Court of Punjab and Haryana at Chandigarh

RSA No.133 of 2016(O&M)

Date of Decision: 22.1.2016

Ami Lal and another

---Appellants

versus

Prem Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Prateek Rathee, Advocate
for the appellants

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

Rekha Mittal, J.

The present regular second appeal has been directed against the judgment and decree passed by the Additional District Judge, Mewat whereby the appeal preferred by the respondent/plaintiff has been allowed and the judgment and decree passed by the trial court has been modified by allowing claim of the respondent for specific performance of the agreement to sell dated 25.1.2010 instead of alternative relief for recovery of earnest money alongwith interest as has been allowed by the learned trial court.

The respondent/plaintiff filed the suit that the appellants/defendants entered into an agreement to sell dated 25.1.2010 in respect of the suit land for a sale consideration of ₹11,31,250/-. The possession of the suit land was delivered to the proposed vendee at the time

of agreement. It was agreed between the parties that the respondent can get the sale deed executed and registered as soon as the rights of the appellants in the suit property gets crystalized in the pending litigation. It is further pleaded that the respondent always remained ready and willing to perform his part of the agreement.

The appellants/defendants filed the written statement challenging maintainability of the suit, locus standi of the respondent to file the suit and the respondent having concealed true and material facts from the Court. It was further pleaded that at the time of execution of the agreement to sell, the appellants were not owner of the suit property and they had executed a special power of attorney and authorised the respondent to file and contest the suit of the appellants. At that time, the respondent obtained signatures/thumb impression of the appellants on blank paper and misused the same for the alleged agreement. All other material averments in the plaint have been denied.

The learned trial court, on due consideration of the pleadings of the parties, issues framed for determination, evidence adduced and rival submissions made by their respective counsel came to conclude that the appellants entered into an agreement to sell dated 25.1.2010 in view of the terms and conditions incorporated therein but the trial court allowed the alternative relief for recovery of ₹11,31,250/- alongwith interest at the rate of 12% per annum, primarily on the ground that as the appellants were not owners of the suit land on the date of agreement, the respondent is not entitled to specific performance of the said agreement.

The respondent preferred an appeal before the court below to express his grievance for rejection of his claim for specific performance of the agreement. The appeal preferred by the respondent was allowed and his suit for specific performance of the agreement was decreed.

Feeling aggrieved by the judgment passed by the court in appeal, the present regular second appeal has been preferred by the appellants-Ami Lal and another.

Counsel for the appellants would contend that the appellants never entered into an agreement to sell and the same was the result of fraud and forgery as it was prepared on signatures/thumb impression obtained on a blank stamp paper on the pretext of preparing a power of attorney authorizing the respondent to prosecute civil suit No. 619 of 2008/2011 titled “Ami Lal vs. Gram Panchayat”. It is further argued that the courts below have committed a serious error rather illegality in accepting the claim of the respondent that the appellants with an intention to sell suit land entered into an agreement to sell the suit property.

Another submission made by counsel is that the learned trial court has rightly held that the respondent is not entitled to specific performance of the agreement to sell as the appellants were not the owners of suit land on the date of alleged agreement to sell.

I have heard counsel for the appellants, perused the records and find no merit in the appeal.

Counsel for the appellants has fairly conceded that neither any appeal nor any cross objections were preferred by the appellants against the

judgment passed by the trial court holding against them that they had entered into an agreement to sell dated 25.1.2010 in favour of the respondent and have already received the total sale consideration of ₹11,31,250/- at the time of agreement. As the appellants never challenged the findings recorded by the trial court in regard to correctness and genuineness of the agreement to sell, it is not open for them to assail those findings by filing the present appeal. The findings recorded by the trial court in regard to the agreement to sell qua the appellants have already attained finality.

So far as the plea that the respondent was not entitled to seek specific performance of the agreement for want of ownership rights with the appellants at the time of alleged agreement to sell, the same is misconceived and merits rejection. The agreement to sell contains a specific recital that the sale deed would be executed by the proposed vendors after their right of ownership in the suit property stands determined in the pending litigation. There is no denial that the suit filed by the appellant(s) against the Gram Panchayat claiming ownership of the suit land has been allowed in his favour. Keeping in view the terms and conditions of the agreement coupled with the factum that the appellants have been held to be owner of the suit land, they cannot escape from their liability to perform their part of the agreement in view of the findings recorded by the court below.

In view of what has been discussed hereinabove, neither any substantial question of law arises for adjudication nor there is any error much less illegality in the judgment passed by the court in appeal. As a

result, the appeal is dismissed in limine. No order as to costs.

Since the appeal has been decided on merits, the application for condonation of delay is of academic relevance only.

(Rekha Mittal)
Judge

22.1.2016
PARAMJIT