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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3633-2013 (O&M)
Date of decision : 08.08.2016

Baldev Raj

... Appellant

Versus

Badami Devi @ Kadami Devi

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ravindra Jain, Advocate
for the appellant.

Mr. R.S. Budhwar, Advocate
for the respondent.

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)

The appellant-plaintiff is aggrieved of the impugned judgment and decree of the lower Appellate Court, whereby the decree of the trial Court granting discretion by way of specific performance of the agreement to sell dated 25.08.1998 and 15.02.1999 has been treated as refund of the earnest money of ₹ 60,000/- along with interest @ 8% from 31.03.1999 till its realisation within a period of two months from the date of the passing of the judgment, failing which, simple interest @ 9% per annum.

Mr. Ravindra Jain, learned counsel appearing on behalf of the appellant-plaintiff submits that the agreement to sell in respect of the house No.299 was entered into on 25.08.1998. The target date for registration and

execution of the sale deed was 31.03.1999. A sum of ₹ 60,000/- was paid. However, before the expiry of the target date, another agreement to sell dated 15.02.1999 was entered into and the target date was 27.08.1999. A sum of ₹ 10,000/- was also paid. Total sale consideration was ₹ 90,000/-. Preceding to the filing of the suit, there was a legal notice and the suit was filed on 20.01.2001, therefore, the appellant-plaintiff had always been ready and willing. The respondent-defendant has not been able to disprove his signatures/dispel the presumption on the signatures on the agreement to sell except by taking the unilateral stand of loan which could not be proved otherwise. The agreement to sell has been proved through the testimony of two attesting witnesses and the legal notice is Ex.P-8 and postal receipts (Ex.P-10) to (P-12) and marking of the presence by way of an affidavit is Ex.P-13. On the contrary, the respondent-defendant did not put in appearance on the stipulated date, thus, urges this Court for formulation of the following substantial questions of law:-

1. Whether the appellant-plaintiff had always been ready and willing to perform his part of the agreement to sell.
2. Whether the judgment and decree of the lower Appellate Court not granting the discretion relief holding the appellant-plaintiff to entitle to the refund of earnest money is legal and justified.

Mr. R.S. Budhwar, learned counsel appearing on behalf of the respondent-defendant submits that the appellant-plaintiff had not come to the Court with clean hand and he had concealed the factum of the previous agreement to sell Ex.DW-1/A and DW-1/B which was also executed in the

1997, though it was orally cancelled. It was a basically loan transaction and therefore, time and again, the agreement to sell has been executed. It is a only house and hardship would be caused, in case, the decree of the trial Court is restored. Another witness, namely, Hans Raj, stated that the agreement to sell was not written by him, but was written by PW-2, who was also been examined, thus, urges this Court affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the readiness and willingness of the appellant-plaintiff had always been there as owing to the dates and facts noticed above. In case, the respondent-defendant had any grievance, he could have filed the reply or rebutted on receipt of the legal notice (Ex.P-8) which has duly been proved through postal receipts (Ex.P-10) to (Ex.P-12) which has carried a presumption of truth as per Section 27 of the General Clause Act. The respondent-defendant has failed to examine the Expert, much less, lead evidence to dispel his signatures on the agreement to sell. No payment of loan instalment or return of the loan alleged to have been taken has been proved. It is general trend by the vendor in taking a complete somersault when he is not ready to perform his part of the agreement to sell by taking the plea of loan.

Since, the agreement to sell is of the year 1999, I deem it appropriate to order for compensation over and above total amount of the sale consideration and accordingly, the judgment and decree of the lower Appellate Court is hereby set aside and that of the trial Court is restored.

The respondent-defendant is directed to deposit the balance amount of sale

consideration i.e. ₹ 30,000/- + ₹ 1,00,000/- within a period of three months from the receipt of the certified copy of this order and further directed to register and execute the sale deed within the aforementioned period, failing which, the appellant-plaintiff has able to get the decree executed in accordance with law. The substantial questions of law as noticed above are answered in favour of the appellant-plaintiff.

Appeal stands allowed.

08.08.2016
yogesh

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No