

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2017 of 2016 (O&M)

Date of Decision: 27.04.2016

Mohan Singh

... Petitioner(s)

Versus

Bant Singh and Another

... 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. Malkiat Singh, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal, filed by defendant No.1- Mohan Singh, against concurrent findings of facts recorded by both the Courts below. The Court of first instance partly decreed the suit of the plaintiff for alternative relief of recovery with costs to recover the amount of ₹ 8,00,000/- along with simple interest at the rate of 9% per annum on the principal amount with effect from the date of execution of agreement (Ex.P1) i.e. 23.5.2006 till date of decision and further future simple interest at the rate of 6% on the principal amount with effect from the date of the judgment till actual realization. However, the

Court of first instance declined the prayer for specific performance of the agreement of sale (Ex.P1). Two separate appeals were filed before the first Appellate Court, one by plaintiff-Bant Singh and other by defendant No.1-Mohan Singh. Both the appeals were dismissed by the first Appellate Court.

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 possession by way of specific performance of agreement of sale dated 23.5.2006. A sum of ₹ 8,00,000/- was paid as earnest money and balance amount was to be paid at the time of execution of sale deed on or before 7.6.2007. As per plaintiff, he was always ready and willing to perform his part of the agreement but defendant No.1 failed to perform his part of agreement, despite requests and as such necessity of the suit.

Defendant No.1 contested the suit *inter alia* taking the plea that he had never executed agreement of sale in favour of the plaintiff. However, plaintiff and defendant No.1 are known to each other as plaintiff is a Commission Agent and running his commission agency in the name & style of M/s Bant Singh & Sons, Morinda. Defendant No.1 used to sell his crops at the shop of plaintiff and as such he had obtained signatures and thumb impressions of defendant No.1 on some papers and his signatures were also obtained on stamp papers. Later on, he came to know that plaintiff had prepared alleged agreement of sale by playing fraud upon him. There was no payment of earnest

money and prayed that suit be dismissed.

Defendant No.2 filed separate written statement *inter alia* taking the plea that defendant no.1 was not competent to execute agreement of sale in favour of the plaintiff and the said agreement is illegal, null and void. More so, plaintiff was aware of loan taken by defendant No.1 and execution of mortgage deed. It was prayed that suit be dismissed.

On these facts, the Court of first instance framed the issues and parties were asked to lead their respective evidence. The Court of first instance, after appreciating the entire evidence and material available on the file, partly decreed the suit and alternative relief of recovery was granted. Two separate appeals were filed, one by plaintiff and another by defendant No.1. Both the appeals were dismissed by first Appellate Court and as such present regular second appeal, filed by defendant No.1, before this Court.

Learned counsel for the appellant submitted that the Court below has completely ignored the fact and no agreement was executed by him and the Court below has not considered the arguments advanced by the appellant, which resulted into erroneous findings and present appeal be accepted and suit of the plaintiff be dismissed.

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 recorded concurrent findings of facts that execution of agreement of sale (Ex.P1) has been duly proved and even passing of earnest money of ₹ 8,00,000/- to the present appellant has

also been proved. Such findings of facts have been recorded on the basis of statements of both the attesting witnesses i.e. PW.2-Nirmal Singh and PW.3-Harchand Singh, who deposed regarding due execution of agreement of sale (Ex.P1). The appellant has not been able to dispute their version. The Court below discarded the plea of fraud. The Courts below also rightly observed that if at all defendant No.1 was victim of fraud and that fraud has come to his notice in the year 2008, then why no complaint was lodged against the plaintiff for taking any action. The Courts below rightly recorded the finding that execution of agreement (Ex.P1) is proved on the basis of statements of attesting witnesses and execution of documents itself and further that plea of fraud has not been proved at all. The execution of agreement of sale (Ex.P1) and receipt of earnest money have been duly proved.

However, the Court of first instance, in lieu of passing of decree for specific performance, passed decree for alternative relief for recovery of amount of ₹ 8,00,000/- along with interest. The said concurrent findings of facts recorded by both the Courts below do not call for any interference and no substantial question of law are 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 discussions made 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

April 27, 2016
"DK"