

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No. 2325 of 2016 (O&M)

Date of decision:26.7.2016

Hakam

... Appellant

versus

Aas Mohd.

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

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

...

AMOL RATTAN SINGH, J. (Oral)

CM No.6139-C of 2016

For the reasons stated in paragraph 3 of the application, the delay of 158 days in refiling the appeal is condoned.

The application is allowed.

RSA No.2325 of 2016

1. Learned counsel for the appellant though has shown from the judgment of the lower appellate Court that it was held even by that Court, while reversing the judgment and decree of the Civil Judge, that it could not be proved that the agreement to sell in question, i.e. the one dated 2.5.2008, was executed by way of a security against a loan advanced, however, the appellant was still granted only the alternative relief of recovery of the amount of consideration of Rs.5,00,000/- paid, along with interest @ 6% per annum, whereas the learned Civil Judge had decreed the suit of the plaintiff in his favour in toto, granting him the relief of specific performance.

A perusal of the judgment of learned lower appellate Court

shows that the respondent-defendant had proved that two earlier agreements, dated 2.7.2007 and 9.4.2008, qua the same land, had been executed; however, the appellant even under oath denied ever having executed the same. Hence, it was held that on the ground of deliberate concealment, he did not deserve the decree of specific performance in his favour.

2. Learned counsel submits that actually there was no need for the appellant-plaintiff to disclose the earlier two agreements (photocopies of which have been produced in Court today), in view of the fact that, as a matter of fact, they were all successive agreements executed upto 2.5.2008, a new agreement having been executed each time some additional part of the total consideration of Rs.7,42,000/- was paid, with Rs.5,00,000/- having been paid upto 2.5.2008. Hence, he submits that the agreement dated 2.5.2008 amounted to a novation of the earlier agreements, the earlier ones having ceased to exist qua the same property, for the same amount of consideration, with only the date fixed for execution of the sale deed having been changed.

He further submits that the last agreement dated 2.5.2008 was undoubtedly in substitution of the earlier agreements, because undoubtedly, a perusal of all the three agreements, which were duly executed by either party, (photocopies of which have been produced in Court today), shows that there was no reference to the earlier agreements and only the total amount of the consideration money paid is shown, with a fresh date fixed for execution of the sale deed.

3. Having heard learned counsel, this Court is of the opinion that

even if the contentions were otherwise to be accepted, however, the fact that the appellant lied under oath and virtually denied the earlier agreements dated 2.7.2007 and 9.4.2008, amounted to not only play ducks and drakes with the Court, but also raised a very natural suspicion with regard to the true intent behind each agreement.

It would have been another matter if the appellant had simply not referred to the earlier agreements in the suit, considering that there was a new agreement in existence, due to which there was no need to refer them. However, the appellant also testified that he did not know the scribe who had written all three agreements, till the date that he drew up the last agreement dated 2.5.2008 and, in fact, tried to hide the very existence of the earlier agreements, which obviously shows that there was something more to it than meets the eye.

Despite the above, the learned lower appellate Court still partly decreed the suit in favour of the appellant, to the extent that the amount of consideration money of Rs.5,00,000/- paid by the appellant-plaintiff to the respondent-defendant was ordered to be refunded, along with interest @ 6% per annum thereupon, as already noticed.

4. Consequently I find no reason to interfere with the judgment of the learned lower appellate Court. This appeal is, therefore, dismissed *in limine*, but with no order as to costs.

26.7.2016
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No