

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 4765 of 2013(O&M)
Date of decision : February 17, 2016

Om Parkash

..... Appellant

Versus

Amarjit Singh (deceased) through L.Rs and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Munish Gupta , Advocate
for the appellant.

Mr. HPS Ghuman, Advocate
for respondent Nos. 2 to 7.

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 against the concurrent finding of fact whereby suit seeking specific performance of the agreement to sell dated 20.12.2000, two receipts dated 30.10.2001 and 28.2.2003 in respect of land measuring 8 bighas against alleged earnest money of ₹23 lacs against total sale consideration of ₹24 lacs has been dismissed.

Learned counsel appearing on behalf of the appellant submits that both the courts below have not appreciated, much less addressed the issue viz-a-viz proving of the agreement to sell. The statement of Varinder Pal the attesting witness has been read in isolation and if read complete, the execution of agreement to

sell has been proved. The extended date was 11.9.2003. The suit has been filed on 24.09.2003, therefore readiness and willingness was alive. There had been an instance of previous transaction between the parties and therefore the defendants failed to discharge onus viz-a-viz signatures on the blank papers and having failed to disbelieve and prove signatures, the agreement to sell was ex facie proved. The courts below ought to have exercised discretion under Section 20 of the Specific Relief Act, 1963, thus beseeches indulgence of this court for formulation of substantial questions of law.

Learned counsel appearing on behalf of the respondents-defendants submits that execution of the agreement to sell has been disbelieved through the testimony of attesting witness PW-4-Varinder Pal who did not prove the receipt of payment of earnest money, much less signatures of the defendants. No other corroborative evidence has been brought/ lead on record to the averments made in the suit, thus, prays for dismissal of the appeal as concurrent findings in the absence of any substantial question of law could not be interfered with.

I have heard learned counsel for the parties and appraised the paper book and am of the view that there is no merit in the appeal, as on going through the statement of PW-4-Varinder Pal, it reveals, that he spilled beans by stating viz-a-viz non-execution of the agreement to sell, neither the defendant appended signature in his presence, much less viz-a-viz payment of earnest money in the presence of other attesting witness has not been acknowledged.

PW-5 in the cross-examination admitted the agreement to sell was not scribed in his presence as he had gone out of station and he sent Varinder Pal for getting/for scribing the agreement to sell. This fact has not been pleaded in the plaint. He feigned ignorance with regard to purchase of stamp papers for scribing of agreement to sell in his presence or scribe. All these facts irresistibly lead to a conclusion that plaintiffs have failed to prove ingredients of Section 20 of Specific Relief Act, 1963.

In the absence of same, rightly so the courts below have exercised jurisdiction in declining the relief.

I do not find any illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction.

The appeal is devoid of merits. Accordingly the same is dismissed.

(AMIT RAWAL)
JUDGE

February 17 , 2016
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