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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-5143-2013 [O&M]

Date of Decision : March 21st 2016

Kanta

.... Appellant

Versus

Gajanand

.. Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr. A.K.Ahluwalia, Advocate,
for the appellant.

Mr. Som Nath Saini, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present Regular Second Appeal by the defendant is directed against the judgment and decree dated 27.09.2013 whereby Additional District Judge, Bhiwani accepted the appeal and set-aside judgment and decree dated 5.10.2011 passed by Civil Judge [Junior Division], Charkhi Dadri whereby civil suit titled – **Gajanand Vs. Shyamlal** was dismissed.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

3. Relevant facts of the case for the purpose of decision of this appeal; that the plaintiff filed a suit for possession by way of specific performance of agreement of sale dated 16.11.2006 [Ex. P1] executed by the defendant in favour of the plaintiff in respect of the suit land as per

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jamabandi for the year 1999-2000. As per the plaintiff, the defendant is owner in possession of the suit land and agreed to sell suit land to the plaintiff for a sum of Rs.2,20,000/- vide agreement, Ex. P1. The same was signed by the parties in the presence of the witnesses and earnest money of Rs.50,000/- was paid. The target date for execution of the sale deed was fixed as 30.11.2007. The plaintiff was willing and ready to perform his part of agreement, but the defendant failed to do so despite notice and as such, necessity of the suit.

4. The defendant contested the suit thereby denying the averments of the plaint and took the plea that in fact, the defendant was in need of money for treatment and for that purpose he approached the plaintiff who made him to sign some papers and advanced Rs.30,000/-. When the defendant wanted to repay the loan amount, the plaintiff disclosed that he wanted possession of his only house where he resides with his aged mother and as such the suit is liable to be dismissed.

5. On the pleadings of the parties, the Court of first instance framed issues. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, the Court of first instance dismissed the suit of the plaintiff. The appeal filed before the Court of first Appeal was allowed and the first Appellate Court reversed the findings and decreed the suit of the plaintiff for specific performance of agreement of sale. The defendant was granted three months time to execute the sale deed in favour of the plaintiff after receiving the remaining sale consideration. As such, the present Regular Second Appeal.

6. Arguments advanced by learned counsel for the parties heard

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and relevant record was perused. Present appeal involves following substantial question of law:-

Whether the Court of first Appeal misread and mis-appreciated the evidence which resulted into erroneous findings?

7. While arguing this point, learned counsel for the appellant submitted that the present suit is for specific performance of the agreement of sale, Ex. P1, whereas the agreement is not for the house, but in fact, the suit property is residential house of the appellant. The construction of house was raised in the year 2000 and that is evident from the Municipal Committee record and the said agreement is regarding vacant land only. However, the Court of first Appeal completely ignored this fact while reversing the well reasoned findings recorded by the Court of first instance and the said misappreciation of evidence has resulted into erroneous findings.

8. While arguing this point, learned counsel for the respondent submitted that the suit property bears ward No. and there are two separate properties. The Court of first Appeal has correctly recorded the finding that the agreement of sale was duly proved before the Court below and as such, decreed the suit and the present appeal is without any merit and the same be dismissed.

9. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that the controversy revolves around agreement of sale dated 16.11.2006 [Ex. P1]. There is no dispute to the remaining facts that the agreement was signed by both the parties. However, the defendant has come with the plea that it was not his conscious bargain because he was ill since long time and required money for his treatment. He had taken a loan of

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Rs.30,000/- from the plaintiff and at that time, the defendant got his signatures on some papers and later on, the plaintiff forged the said document whereas the defendant had never any intention to get sale deed executed in respect of his only residential house. However, it had come in the statement of the plaintiff, who appeared as PW-1, that the agreement was with regard to a plot having boundary wall and there was one room constructed in the same and the agreement was duly executed. Even defendant Shyamlal [DW-1] has admitted that agreement Ex. P1 was duly executed and the same bears his signatures. The Court of first appeal has rightly returned the finding that agreement, Ex. P1 has been duly executed and the same has been proved on the file and the plaintiff has been successful to prove the same. However, it has come by way of evidence that the suit property is the only residential property of the defendant. Hon`ble Supreme Court in **Nanjappan Vs. Ramasamy and another 2015(3) PLR 218 and Veluyudhan Sathyadas Vs. Govindan Dakshyani 2003 (1) RCR (Civil) 28** has held that in case the suit property is only residential constructed property of the defendant, the relief of specific performance of agreement of sale is not to be granted and the Court is to exercise discretion in favour of the defendant and give limited relief to the plaintiff as indicated in Section 21 of the Specific Relief Act, 1963.

10. In view of the above, the present Regular Second Appeal stands partly allowed and the findings recorded by the Court of first Appeal vide impugned judgment and decree dated 27.09.2013 are modified to the extent that the plaintiff is entitled to seek payment of Rs.50,000/- which was paid as earnest money on 16.11.2006 along with interest at the rate of

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9% per annum from the date of payment till date of actual realization. The question posed in para No.6 is answered accordingly. Decree sheet be prepared accordingly.

(SHEKHER DHAWAN)
JUDGE

March 21st 2016
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