IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 3856 of 2015(O&M)
Date of decision : January 21, 2016

Murari Lal (deceased) through his L.Rs

.... Petitioner

Versus

Raghunath

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rakesh Nehra, Advocate
for the petitioner.

Mr. D. K. Tuteja, Advocate
for the respondent.

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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 appellants-defendants are in Regular Second Appeal against the concurrent finding of fact whereby the suit for specific performance of the agreement to sell dated 3.12.2002 in respect of house measuring 15 sq.yards has been decreed and defendant has been called upon to execute and register the sale deed in respect of balance sale consideration.

Mr. Rakesh Nehra, learned counsel appearing on behalf of the appellants submits that the agreement to sell dated 3.12.2002 for a total sale consideration of ₹80,000/- against the alleged receipt of ₹44,500/- was executed as a security for the purpose of taking a loan from the respondent-plaintiff as the previous agreement to sell in similar manner had been entered into with the relatives of respondent-plaintiff. The land vide agreement dated 28.9.2001 Ex.D-1 was agreed to be sold for a valuable consideration of ₹15,000/- in respect of a house measuring 15 sq.yards. The agreement to sell was entered into with Baldev Raj who is none else but brother of plaintiff. The aforementioned agreement was cancelled on 7.11.2001 vide Ex. D-2 and on 8.11.2001 a new agreement to sell was entered into with Usha w/o Baldev Raj for a total sale consideration of ₹25,000/- in respect of an area measuring 25 sq.yards. Though, the witnesses to the aforementioned agreement have not been examined but the scribe PW-3 Som Nath Kapoor has been examined. The present agreement is the third one. Since a fraud had been played upon the plaintiff, a criminal complaint dated 29.10.2004 and 30.1.2004 was submitted to the police.

In view of the aforementioned circumstances, it leads to irresistible conclusion that it was a loan transaction, therefore both the courts below have gravely and perversly erred in granting discretionary relief. In support of his contentions he has relied upon the judgment of Hon'ble Supreme Court in **Nanjappan Vs. Ramasamy and another 2015 (2) RCR (Civil) 224**.

He further submits that it is the only residential house and it would cause undue hardship in case, the discretionary relief is upheld, thus substantial question of law arise for determination by this Court.

Mr. D. K. Tuteja, learned counsel appearing on behalf of the respondent submits that in the previous alleged agreement the plaintiff was not a party. In essence, it was between the different parties. So the appellant cannot take aid of the alleged transaction to project that it was a loan transaction. In support of his contentions he has relied upon the judgment of Hon'ble Supreme Court in **P. S. Ranakrishna Reddy Vs. M. K. Bhagyalakshmi and another 2007 (2) RCR (Civil) 290** to contend that where the landlord had entered into an agreement with the tenant and received advance, the said sale agreement cannot be said to be a loan transaction. The document must be read in its entirety. The intention of the parties must be gathered from the document itself, therefore, no substantial question of law arise for determination by this court and thus prays for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book as well as case law cited at bar.

PW-3-document writer has been examined and in his testimony, nothing surfaced that the previous two agreements were loan transactions, much less the present one. The attesting witness has deposed that the agreement to sell was in respect of 50 sq.yards of house mentioned in the plaint and agreed to be sold for a sale consideration of ₹80,000/- and in lieu thereof the appellant had received a sum of ₹44,500/- in advance.

There is another aspect of the matter that preceding to filing of the suit on 13.10.2004 a legal notice dated 25.3.2003 was served through registered post. Had the story coined in the written statement been an actual state of affairs, nothing prevented the appellants-defendants to reply to the aforementioned legal notice and made a complaint to the police. He would have raised hue and cry, had there been any truth in the contents of the legal notice. Viz-a-viz ratio decidendi culled out by the Hon'ble Supreme Court in **Nanjappan's case (supra)**, it was a case where actually a sale had been entered into 27 years ago. Statutory provisions of Section 20, much less Explanation II of Specific Relief Act, 1963 provides that discretionary relief cannot be negated on the ground of undue hardship. Undue hardship is not a hardship until and unless it is on account of act and conduct of the plaintiff after execution of the agreement to sell. No such evidence has been led on record. The agreement to sell in question clearly shows intention of the party that they had actually agreed to purchase and sell the property described therein.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgment and decree of the courts below.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

January 21 , 2016
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