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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4072-2015 [O&M]

Date of Decision : February 18th, 2016

Buta Singh and others

.... Appellants

Versus

Kuldip Kumar and another

....Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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?

Present Mr. A.S.Gill, Advocate,
for the appellant.

SHEKHER DHAWAN, J.

Present Regular Second Appeal is directed against the concurrent findings of both the Courts below, whereby suit for confirmation of possession by way of specific performance of agreement of sale dated 29.11.2002 was decreed by the Court of first Instance vide judgment and decree dated 13.4.2011. The appeal filed by the defendants [appellants herein] was dismissed by learned Additional District Judge, Hoshiarpur vide judgment and decree dated 9.3.2015.

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 defendants No.1 and 2 being owner of the suit land entered

into an agreement of sale dated 19.11.2002 of suit land. The total sale consideration was fixed to be ₹10,25,000/- and a sum of ₹9,50,000/- was paid as earnest money and the balance payment of ₹75,000/- was to be made at the time of execution of the sale deed. The possession of the land was delivered to the plaintiff, and the target date was fixed as 30.06.2003. On the date fixed, the plaintiff remained present in the office of Sub Registrar with balance sale consideration, but the defendants did not turn up and the plaintiff got his presence marked in the office of Sub Registrar and thereafter filed the present suit for specific performance of agreement of sale.

4. Defendants contested the suit, inter alia taking the plea that in fact the defendants were in need of money and borrowed a sum of ₹3,20,000/- from the plaintiff and one Lali Halta, who was running the business of finance. The loan was to be repaid along with interest @ 8% per annum. The plaintiff got a writing for the purpose of security of loan, which was later on converted into agreement of sale. After getting loan, defendant No.1 was regularly paying the installments @ ₹20,000/- per month to the plaintiff and in the year 2002 the defendants had repaid the entire amount. Plaintiff had been demanding more money and defendants refused to pay and on such refusal, the plaintiff refused to return the writing/papers which were got signed from the defendants. The suit was prayed to be dismissed.

5. On the pleadings of the parties, issues were framed. 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 decreed the suit of the plaintiff. The appeal filed before the Court of first Appeal was dismissed. As such, the present Regular Second

Appeal.

6. Learned counsel for the appellants submitted that as per plaintiff, total sale consideration was fixed to be ₹10,25,000/- and a sum of ₹9,50,000/- was paid as earnest money. Only a meagre amount of ₹75,000/- was to be paid on the target date which itself is not believable. More so, the possession of the land is claimed to have been delivered to the plaintiff at the time of execution of agreement, even the suit is for confirmation of possession which is already with the plaintiff. In fact, the possession of the suit land is with the defendants-appellants till date.

7. The Court has also not considered this fact. The next contention raised by learned counsel for appellants is that plaintiff had allegedly made payment of ₹9,50,000/- on the date of execution of agreement but he has not been able to explain the sources for arranging such a huge amount of ₹9,50,000/-. All these pleas have been completely ignored by the Courts below which resulted into erroneous findings.

6. Having considered the submissions made by learned counsel for the appellants and on appraisal of record, this Court is of the considered view that all these pleas were taken by the appellants before the Courts below as well and the same have been duly considered on the basis of facts and evidence available on the file and the findings of facts have been recorded. The main plea taken by the defendants for ignoring the agreement of sale was that in fact, no agreement of sale was executed by the defendants, rather loan of ₹3,20,000/- was taken and that was repaid in installments. On the basis of evidence available on records the Courts below recorded findings that the defendants had simply taken the aforesaid plea that no agreement was executed, rather loan was taken and the same was repaid, but there is no material or documentary evidence in support of

that available on the file. The appellants could not produce any document showing the repayment of the loan. Though, the contention was raised by learned counsel for appellants that loan of ₹3,20,000/- was taken, but when the defendants was put to cross-examination on that point, he was even unable to tell the date and month of advancement of the loan in his favour. Mr. Amandeep Singh (DW-3) has also admitted that no document was executed at the time of loan transaction whereas in the pleadings, that is written statement having been filed by the defendants, a plea was taken that written document was executed at the time of advancement of loan which was later on converted into agreement of sale. There is no receipt regarding repayment of loan amount. The version of the defendants itself is not believable that the loan of ₹3,20,000/- was taken by them and thereafter repayment was made without any writing and at the same time the appellants expected that the Court may believe that they had signed the document which was later on converted into agreement of sale. More so, Jaswant Kaur (DW-2) denied her signatures on the agreement. It is a case on the basis of pleadings that signatures were taken on blank paper. The Courts below have also perused agreement (Exhibit P-1) and observed that document was written in a regular manner and even the stamp paper was purchased by the defendants on 29.11.2002 for execution of agreement of sale.

7. As regards to the plea of possession of the suit property, it is the positive case of the plaintiff that possession was delivered to him and substantial payment of ₹9,50,000/- was made to the defendants and he is still in possession. Otherwise also, the plaintiff has filed suit for confirmation of possession along with seeking relief of specific performance of agreement of sale dated 29.11.2002. The execution of

agreement has been duly proved on the basis of statement of the plaintiff as well as statement of attesting witness who appeared as PW-3 and deed writer who appeared as PW-1 and the version put forward by the defendants-appellants has been rightly discarded by both the Courts below. There is no reason for interference in the concurrent findings of facts recorded by both the Courts below. There is no substantial question of law involved in the present appeal and hence, the same is not maintainable under Section 100 of the Code of Civil Procedure. Such a view was taken by Hon'ble Supreme Court in case **Santosh Hazari Vs. Purushottam Tiwari (Dead) by LRs.**, JT 2001(2) SC 407.

8. In view of the above, the present Regular Second Appeal stands dismissed.

(SHEKHER DHAWAN)
JUDGE

February 18th, 2016
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