

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
CM No.15260-C of 2015 in/&
RSA No. 4592 of 2015 (O&M)
Date of decision : April 25, 2016

Joginder Singh

..... Appellant

Versus

Bharat Kumar

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R. K. Shukla, Advocate
for the appellant.

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-defendant is aggrieved of the concurrent finding of fact whereby suit seeking specific performance of agreement to sell dated 23.5.2005 in respect of land measuring 9 bighas 19 biswas has been decreed.

Learned counsel appearing on behalf of the appellant submits that application enclosed along with the appeal has been filed by invoking provisions of Order 41 Rule 27 CPC to place on record the documents by way of additional evidence in case additional evidence is allowed. In case, the appellant-defendant had been granted permission to examine the signatures from the previous agreement to sell to show that there had been a loan transaction therefore, the agreement to sell in question cannot be

termed and treated as intention to sell the land in dispute but treated as a loan transaction. Even though in the written statement, the agreement to sell has been admitted. He submits that great hardship would be caused, in case decree for specific performance is affirmed, for, price of the land in question increased manifold.

He further submits that for the same piece of land, the parties had entered into an agreement to sell dated 30.4.2000 for a valuable consideration of ₹10 lacs against receipt of earnest money of ₹3,08,666/-. The said agreement to sell ceased to exist in view of mortgage deed dated 17.5.2004 and it was mentioned that the amount of earnest money had already been paid on 23.5.2005 will be adjusted. The mortgage was for ₹5 lacs. The respondent-plaintiff had allegedly paid the remaining amount of ₹3,10,000/- by adjusting the mortgage amount of ₹5 lacs. In fact the said agreement to sell was a loan transaction and consideration had been paid. All these facts have not been noticed by both the courts below in decreeing the suit and dismissing the appeal, thus urges this court to formulate substantial question of law as framed in the Memorandum of Appeal for determination by this Court.

I have heard learned counsel for the appellant and appraised the paper book and of the view that there is no substance and force in the submission of learned counsel for the appellant, for, once the agreement to sell dated 23.5.2005 has been admitted, the only plea which the defendant could have taken was to belie the stand of the plaintiff qua readiness and willingness. The target date for execution and registration of the sale deed was 15.6.2006. The

respondent-plaintiff had marked himself present before the office of Sub Registrar and also prepared two demand drafts bearing No. 186810 dated 13.6.2006 and 186828 dated 14.6.2006 payable on Punjab and Sind Bank, Patiala Branch for a sum of ₹2,03,500/- and ₹5,000/- respectively. The affidavit of present has also been proved and it was moved in the presence of Surjit Singh nambardar, Ram Singh and Ravinder Singh.

The appellant-defendant has failed to prove on record that the agreement to sell in question was a loan transaction and the amount so referred has been paid. No evidence has been lead on record to show that after the execution of the agreement to sell, certain acts and conduct of the plaintiff has been such, which entails into hardship in order to attract explanation under the provisions of Section 20 of the Specific Relief Act, 1963.

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. There is no illegality or perversity in the aforementioned judgments and decrees 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

April 25 , 2016
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