

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2071 of 2014 (O&M)

Date of Decision: 10.05.2016

Charanjit Singh

... Appellant(s)

Versus

Sukhdev Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. B.S.Dhaliwal, Advocate
for the appellant(s).

Ms. Ritu Punj, Advocate
for the caveator-respondent(s).

Shekher Dhawan, J.

Present regular second appeal, filed by the defendant, against concurrent findings of facts having been recorded by both the Courts below in a suit for possession by way of specific performance of the agreement of sale dated 26.2.2005 executed by the defendant/appellant. The Court of first instance decreed the suit. The defendant preferred first appeal and the same was dismissed by learned Additional District Judge, Ludhiana and as such present regular second

appeal before this Court.

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

Relevant facts of the case set up by the plaintiff that agreement of sale dated 26.2.2005 was executed by the defendant qua the suit land and a sum of ₹ 10,00,000/- was paid as earnest money. Target date for registration of the sale deed was fixed as 30.6.2006. Plaintiff was always ready and willing to perform his part of the contract. But defendant failed to perform his part of the contract despite legal notice and as such necessity of the suit.

Defendant contested the suit *inter alia* taking the plea that agreement of sale is no more in force and plaintiff is not entitled to seek relief of possession and prayed for dismissal of the suit.

On these facts, the Court of first instance settled the issues and the parties were asked to lead their respective evidence. The Court of first instance, after recording of the evidence and appreciation thereof, decreed the suit of the plaintiff for specific performance. Defendant preferred first appeal but the same was dismissed by the first Appellate Court.

Learned counsel for the appellant, while assailing the concurrent findings of facts having been recorded by the Courts below, submitted that appellant was present in the office of Sub Registrar, Raikot on the date fixed for execution of the sale deed. But the plaintiff had not come present. Thereafter, notice was sent to the plaintiff on 3.7.2006 for getting the sale deed executed. But plaintiff had not come

forward.

Learned counsel for the appellant also submitted that in fact plaintiff was not ready and willing for execution of the sale deed and was not having ready cash for execution thereof and that is why plaintiff had not come forward for execution of the sale deed. The Courts below completely ignored these facts while recording the findings and the present case is misappreciation of the evidence by the Courts below which resulted into erroneous findings and the same be set aside.

While arguing on these points, learned counsel for the caveator/respondent submitted that the Courts below have recorded concurrent findings of facts. There is no substantial question of law involved in the present appeal calling for interference by this Court by way of regular second appeal. More so, admittedly the land was mortgaged and the same was not redeemed by the defendant. Till date, the same has not been redeemed. Plaintiff was always ready and willing to perform his part of the contract and the Courts below have already appreciated the evidence. As such, present appeal is without any merit and the same be dismissed.

Having considered the submissions made by learned counsel for the parties and appraisal of the record of the case file, this Court is of the considered view that the Courts below have already appreciated the entire evidence available on the file and recorded concurrent findings of facts. There is absolutely no substantial question of law calling for interference by this Court by way of present regular

second appeal. The Courts below have already recorded observations that plaintiff was ready and willing to perform his part of the contract. The agreement (Ex.P1) has been duly proved as per law. Plaintiff Sukhdev Singh had appeared as PW.2 and deposed that he remained present in the office of Sub Registrar on 30.6.2006 along with requisite balance sale consideration and registration charges but defendant failed to turn up. He had moved an application (Ex.P4) before the Sub Registrar to mark his presence and his affidavit (Ex.P5). Thereafter, plaintiff got issued legal notice (Ex.P3) on 1.7.2006 calling upon the defendant to perform his part of the contract within 15 days thereof. Undisputedly, the suit property was mortgaged with the bank and the same has not been redeemed and that way defendant was not ready and willing for execution of the agreement and the Courts below, while appreciating the above mentioned evidence, recorded concurrent findings of facts, which do not call for any interference by way of present regular second appeal.

As per view taken by Hon'ble the Supreme Court in ***Deity Pattabhiramaswami v. S. Hanymayya and Others AIR 1959 SC 57***, the provisions of Section 100 CPC are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground of finding of fact. As per view taken by Hon'ble the Apex Court in ***Commissioner, Hindu Religious & Charitable Endowment v. P. Shanmugama & Others JT 2005(1) SC 201*** and ***Biswanath Ghosh (Dead) by LRs and Others v. Gobinda Ghosh alias Gobindha Chandra Ghosh & Others AIR 2014 SC 1582***, second

appeal cannot be entertained if there is no substantial question of law involved therein.

In view of the above, present appeal is not maintainable as per the provisions of Section 100 of the Code of Civil Procedure, 1908 and the same stand dismissed.

(Shekher Dhawan)
Judge

May 10, 2016
"DK"