

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 4876 of 2015 (O&M)

Date of Decision: 23.05.2016

Sukhwinder Singh

... Appellant(s)

Versus

Sahib Singh and Another

... 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. Randeep Singh, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal, filed by defendant No.1/appellant, against concurrent findings of facts having been recorded by the Courts below in a suit for possession by way of specific performance of agreement of sale dated 23.8.2005, whereby suit of the plaintiff was decreed by the Court of first instance and appeal filed before the first Appellate Court was dismissed.

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

Relevant facts for the purpose of decision of the present appeal

that parties entered into agreement of sale dated 23.8.2005 for total sale

consideration of ₹ 26,46,0000/- and earnest money of ₹ 6,00,000/- was paid. The sale deed was to be executed on 20.5.2007. After receipt of total amount of ₹ 14,50,000/- in cash as earnest money, defendant No.1 failed to come forward to get the sale deed executed in terms of the agreement of sale, despite requests and legal notice and as such suit before the Court of first instance.

Defendant No.1 contested the suit *inter alia* taking the plea that suit has been filed on false and fabricated facts. Agreement of sale dated 23.8.2005 and writing dated 28.10.2005 were denied by defendant No.1 and prayed that suit is without any merits and the same be dismissed.

On these facts, the Court of first instance settled the issues and parties were put to trial. The parties led their respective evidence. The Court of first instance, after appreciating the entire evidence, recorded the finding that agreement of sale (Ex.P1) was duly executed by defendant No.1 and his signatures were tallied with the signatures appended on the document. The same stood proved on the basis of statement of attesting witness, namely Kulwant Singh (PW.1). Defendant Sukhwinder Singh had put his signatures on the register of stamp vendor and the Court of first instance decreed the suit of plaintiff thereby directing defendant No.1 to get the sale deed executed in favour of the plaintiff. Defendant No.1 preferred first appeal before the first Appellate Court but remained unsuccessful and as such present appeal before this Court.

Learned counsel for the appellant, while assailing the said findings of facts, submitted that the Courts below have not appreciated the oral and documentary evidence correctly and the agreement of sale has not

be set aside.

Learned counsel for the appellant also submitted that the alleged agreement of sale was executed in presence of two marginal witnesses, namely Kulwant Singh and Sukhdev Singh and both the witnesses appeared before the Court of first instance as PW.1 and DW.2 who made contradictory statements regarding their presence. But the Courts below completely ignored this fact, which resulted into erroneous findings and as such judgments & decrees, passed by the Courts below be set aside by accepting the present appeal.

Having considered the submissions made by learned counsel for the appellant and appraisal of the record of the case, this Court is of the considered view that the Courts below have already scanned the oral and documentary evidence and recorded findings of facts that agreement of sale was duly executed and the same was proved on the file. More so, plaintiff had examined PW.12 Dr. Interjit Singh, Handwriting & Finger Prints Expert, Patiala, who had submitted his report after examining the disputed signatures and comparing the same with admitted signatures. Defendant No.1 has not been able to lead any evidence to rebut the contention of plaintiff. The entire evidence has been scrutinized thoroughly by the Courts below and there being concurrent findings of facts and no substantial question of law involved in the instant 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

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

(Shekher Dhawan)
Judge

May 23, 2016
“DK”