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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2252-2014 [O&M]

Date of Decision : January 8th, 2016

Jit Ram

.... Appellant

Versus

Surinder Kaur and others

.... 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. Sukhjit Singh, Advocate,
for the appellant.

Mr. Sarju Puri, Advocate,
for the respondents.

SHEKHER DHAWAN, J.

Present Regular Second Appeal is directed against the concurrent findings of both the Courts. The suit filed by the Kulwinder Singh - plaintiff for specific performance of agreement of sale dated 11.11.2005 was decreed vide judgment and decree dated 14.1.2013 passed by Civil Judge [Senior Division]. The first appeal filed by the present appellant was dismissed by learned Additional District Judge, Shaheed Bhagat Singh Nagar vide judgment and decree dated 25.7.2013.

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

3. Plaintiff – Kulwinder Singh filed a suit for specific performance of

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agreement of sale dated 11.11.2005 with the direction to the defendant [appellant herein] to execute sale deed in respect of land measuring 10 Kanals 13 Marlas, situated in the revenue estate of Village Jania, Tehsil and District Nawanshahr. As per the plaintiff, payment of earnest money of Rs.3.00 lacs was to be made and sale deed was to be executed. The total sale consideration was determined to be Rs.10,11,750/-. The balance payment was to be made at the time of execution of the sale deed i.e. on or before 20.5.2006. However, the defendant failed to get the sale deed executed and as such necessity of filing the suit had arisen.

4. The defendant put-in appearance and contested the suit taking the plea that the plaintiff has not come to the Court with clean hands and the suit was barred. On merits, the defendant took the plea that no such agreement was executed nor any earnest money was received by him. In fact, the defendant took a loan from the plaintiff for the purpose of sending his son abroad and at that time, the plaintiff had obtained signatures on blank paper as a surety. The agreement of sale and receipt were claimed to be forged and fabricated documents.

5. After leading evidence by both the parties and appreciation thereof, the Court of first instance decreed the suit for specific performance vide judgment and decree dated 14.1.2013. The first appeal filed by appellant - Jit Ram was dismissed by learned Additional District Judge, Shaheed Bhagat Singh Nagar vide judgment and decree dated 25.7.2013.

6. Learned counsel for the appellant took the plea that in fact, no agreement of sale was ever executed nor any receipt was issued and the said documents are fabricated and forged one and both the Courts below

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have not appreciated the evidence in its correct perspective. He prayed that the present appeal be accepted.

7. Learned counsel for the respondents submitted that both the Courts below have already appreciated the evidence to return a finding against the appellant. 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 and the appeal be dismissed.

8. Having considered the submissions made by counsel for the parties and going through the file, this Court is of the considered view that both the Courts below have already appreciated the entire evidence led by the parties. Both the Courts below have recorded the concurrent findings based on facts and evidence available on file and there are no ground to interfere and set aside the said findings. The present appeal is not maintainable under Section 100 CPC. Such a view was taken by Hon'ble Supreme Court in case **Santosh Hazari Vs. Purushottam Tiwai (Dead) by LRs., JT 2001(2) SC 407,**

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

(SHEKHER DHAWAN)
JUDGE

January 8th, 2016
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