

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 5518 of 2015 (O&M)

Date of Decision: 11.05.2016

Ram Sawroop

... Appellant(s)

Versus

Surinder Kumar

... 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. Rajiv Sidhu, Advocate
for the appellant(s).

Shekher Dhawan, J.

CM-5247-C-2016

Civil Miscellaneous Application is allowed. Document
(Annexure A1) is taken on record.

RSA-5518-2015

Present regular second appeal, filed by the defendant, against the judgment & decree, passed by both the Courts below, whereby suit for possession on the basis of specific performance of agreement of sale dated 9.1.2009, filed by the plaintiff, was accepted and first appeal was dismissed by the first Appellate 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, as set up in the plaint, that agreement of sale dated 9.1.2009 was duly executed for total sale consideration of ₹ 6,68,250/- and a sum of ₹ 4,50,000/- was paid as earnest money. Target date for execution of sale deed was fixed as 7.7.2009. It was mutually agreed that defendant would get the suit land redeemed from the bank after paying the loan amount. Plaintiff always remained ready and willing to perform his part of contract and for that purpose he remained present in the office of Sub Registrar, Nathusari on the date fixed for execution of the sale deed and got his presence marked by way of affidavit. Defendant failed to put in appearance despite legal notice dated 9.9.2009. Defendant has not come forward to get the sale deed executed in terms of agreement of sale and as such necessity of the suit.

Defendant contested the suit *inter alia* denying the execution of agreement of sale. As per defendant, market value of the suit land was ranging from ₹ 6,00,000/- to ₹ 7,00,000/- per acre and no sane person would have agreed to sell his land at such a low price. More so, the suit land is the only source of livelihood for the defendant and his family members. Infact, one Sonu was running a kiriyana shop in village Kaagdana. At the time of marriage of son of defendant, he purchased kiriyana goods from the shop of Sonu on credit basis and some amount was paid in cash and remaining amount was agreed to be paid within three or four months. At the time of purchasing of kiriyana

goods, Sonu executed an agreement dated 9.1.2009 with respect to the suit land as security, which was to be returned later on. Despite payment of balance amount, the alleged agreement was not returned and the same was misused in this case. In fact, agreement was executed for security purpose only. The said agreement was cancelled and one new agreement was, thereafter, prepared in the name of plaintiff as security. Defendant took the plea that he had never met the plaintiff at any point of time and had not received any legal notice from him and prayed that suit be dismissed.

On these facts, following issues were framed by the Court of first Instance:-

- "1. *Whether the plaintiff is entitled to get the possession of the suit land by way of specific performance of sale agreement dated 9.1.2009? OPP*
2. *Whether the suit is not maintainable? OPD*
3. *Whether the plaintiff has got no cause of action and locus standi to file the present suit? OPD*
4. *Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD*
5. *Relief."*

After recording of evidence of the parties and appreciation thereof, the Court of first instance decreed the suit of the plaintiff for possession of the suit land as well as specific performance of agreement of sale dated 9.1.2009. Defendant preferred appeal but remained unsuccessful and as such present regular second appeal before this

Court.

Learned counsel for the appellant submitted that both the Courts below have not appreciated the real controversy and as a result of misappreciation of evidence, erroneous view was taken, which is liable to be reversed; appeal be accepted and judgments & decrees passed by the Courts below be set aside.

Learned counsel for the appellant also submitted that in fact Sonu is the real mastermind behind the entire controversy and he was attesting witness in earlier agreement dated 23.6.2006. Just on the asking of Sonu, the agreement was executed, which was to be used as security purpose only and that has been misused. The execution of agreement has been denied by defendant right from the beginning but the Court below has not considered this fact and the same plea was also taken by the appellant in reply to the notice of agreement of sale dated 23.6.2006. But the Court below completely ignored this fact while recording findings of facts and the same are liable to be reversed.

Having considered the submissions made by learned counsel for the appellant, this Court is of the considered view that both the Courts below have already appreciated the entire oral as well as documentary evidence and returned the findings of facts that plaintiff has been able to prove due execution of agreement of sale dated 9.1.2009 and the said findings were returned on that basis. The said findings of facts do not call for any interference. Plaintiff has also been able to prove that he was always ready and willing to perform his part of contract. The plea taken by the defendant that agreement was for

the purpose of security was rightly discarded by the Courts below. The Courts below have appreciated the oral evidence that if at all the contention of defendant is taken to be correct that agreement of sale dated 9.1.2009 was executed just to secure the amount of Sonu, then the agreement of sale must have been in the name of Sonu and not in the name of plaintiff. Thereafter, defendant coined up a story regarding earlier agreement of sale and cancellation thereof. The Courts below rightly observed that it is unbelievable that the defendant would continue to execute one after the other agreement of sale (Ex.PA) without there being any intention for executing the sale deed. Otherwise, the execution of agreement has been duly proved by examining PW.3-Sonu, who is the attesting witness. To the contrary, defendant has not been able to lead any evidence to establish on the file that agreement of sale in question was executed as security only. Both the Courts below have recorded concurrent findings of facts. There is no substantial question of law involved in the present 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 stands dismissed.

(Shekher Dhawan)
Judge

May 11, 2016
"DK"