

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2900 of 2014 (O&M)

Date of Decision: 29.01.2016

Balwinder Kaur and Others

... Appellant(s)

Versus

Mohan Singh and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Jagjit Singh, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal against concurrent findings of facts of both the Courts below on a suit for specific performance having been filed by the plaintiff/respondent.

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 that plaintiff had filed suit for specific performance of agreement dated 28.9.2004 executed by defendant No.1 in favour of plaintiff on receipt of earnest money of ₹ 2,50,000/- against total sale consideration of ₹ 7,20,000/-. As per plaintiff, he was ready and willing to perform his part of contract but defendant No.1 failed to put in

appearance in the office of Sub Registrar, Dhilwan on the stipulated dated i.e. 28.4.2005. Plaintiff got his presence marked.

Defendants took the plea that plaintiff had not executed the said agreement. Rather defendant No.1 had borrowed a sum of ₹ 20,000/- from the plaintiff, which was to be repaid along with interest at the rate of 6% per annum in the year 2000. He used to pay the interest for two years. Thereafter, plaintiff put pressure upon defendant No.1 to sign on blank papers and the same were later on converted into agreement of sale which was never executed by defendant No.1. More so, the suit property was already mortgaged on or before 28.9.2004.

Defendant No. 2 filed separate written statement taking preliminary objection that no notice under Section 79 of the Punjab Cooperative Societies Act, 1961 was served and jurisdiction of the Civil Court was also challenged. The loan amount was to be repaid by defendant No.1 in five years in ten equal half yearly instalments and the right of defendant No.2-bank is liable to be kept intact by creating the outstanding loan amount.

On these facts, Court of first instance settled the issues and the parties were put to trial. Court of first instance, after recording the evidence and appreciating thereof, recorded the findings that agreement of sale dated 28.9.2004 was duly executed and proved on the file. The plea of denial was not accepted by the Court of first instance and the suit was decreed. The said findings of facts were duly affirmed by the Court of first appeal.

Learned counsel for the appellants submitted that

agreement of sale was never executed and the same was result of fraud only. More so, possession of the land was never taken and the same is still with the appellants but the Courts below have not appreciated this controversy while recording the findings of facts. The said findings of facts were erroneous and both the Courts below have misread the evidence, which resulted into erroneous findings and the same are liable to be set aside.

Having considered the submissions made by learned counsel for the appellants, this Court is of the view that plea of fraud is required to be proved strictly because it is very easy to allege fraud but the law expects that fraud must be proved in its strict sense. Whereas in the case in hand, appellants have not been able to prove the same in any way. There are no grounds to interfere with the concurrent findings recorded by both the Courts below on the basis of facts and evidence available on the file. There is no substantial question of law involved in the present appeal and as such the same is not maintainable under Section 100 of the Code of Civil Procedure. Such a view was taken by Hon'ble Supreme Court in case ***Santosh Hazari Vs. Purushottam Tiwari (Dead) by LRs., JT 2001(2) SC 407.***

In view of the above, the present regular second appeal stands dismissed being devoid of any merit.

(Shekher Dhawan)
Judge

January 29, 2016
"DK"