

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 5634 of 2015 (O&M)

Date of Decision: 31.05.2016

Somesh

... Appellant(s)

Versus

Gulab Singh (since deceased) through Legal Representatives and Others

... 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. Amit Chaudhary, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal, filed by defendant No.1, against the concurrent findings of facts having been recorded by the Courts below in a suit for specific performance of agreement of sale dated 8.7.1998.

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 filed suit for specific performance of agreement of sale dated 8.7.1998 with regard to suit property. The total sale consideration was ₹ 4,50,000/- and a sum of ₹3,00,000/- was received as earnest money. The balance sale consideration

of ₹ 1,50,000/- was to be paid on the target date i.e. on or before 10.6.1999. Plaintiff was always ready and willing to perform his part of the agreement but the defendants failed to do so and for that purpose plaintiff had appeared in the office of Sub Registrar, Nilokheri along with balance sale consideration but defendants failed to put in appearance. Despite legal notice, defendants failed to get the sale deed executed and as such necessity of the suit.

Defendants contested the suit *inter alia* taking the plea that no such agreement was ever executed and there was no question of receipt of any earnest money. The attesting witnesses as well as the deed writer and the plaintiff forged the signatures of defendant No.1 on the agreement of sale and defendant No.1 was not liable to get the sale deed executed and suit deserves dismissal.

On these facts, issues were framed by the Court of first instance and parties were put to trial. After recording the evidence and appreciating thereof, the Court of first instance decreed the suit of plaintiff for specific performance of agreement of sale. Being aggrieved of the passing of said judgment, defendant No.1 preferred appeal before the first Appellate Court but remained unsuccessful and as such present regular second appeal before this Court.

Learned counsel for the appellant submitted that the Courts below have completely ignored the fact that defendant No.1 denied the execution of the agreement right from the beginning. He has denied his signatures on the agreement. He has also denied the receipt of earnest money. More so, at the time of agreement of sale, defendant was minor and

as such he was not liable to get the sale deed executed in terms of such

agreement. But the Courts below completely ignored this fact. So, present appeal be accepted and findings recorded by the Courts below be set aside and suit of the plaintiff be dismissed.

Having considered the submissions made by learned counsel for the appellant and facts of the case, this Court is of the considered view that the Courts below have already scanned the entire oral and documentary evidence and recorded concurrent findings of facts that agreement of sale dated 8.7.1998 was duly executed and defendant No.1 had put his signatures in presence of plaintiff as well as attesting witness and the deed writer. The same has been proved on the file before the Courts below. The concurrent findings of facts recorded by the Court of first instance were also affirmed by the first Appellate Court. The plea of denial on the part of defendant No.1 has been rightly rejected by the Court below because there was no material or substance in support of this contention.

As regard to plea of minority, taken by the appellant, this fact has been mentioned in the agreement itself that party to the agreement was more than 18 years of age at the time of agreement of sale. At the trial stage, appellant was not in a position to prove the plea of minority in any way and the Courts below returned the findings of facts accordingly. Such concurrent findings of facts do not call for any interference by way of present regular second appeal. There is no substantial question of law involved in the instant appeal.

In *Deity Pattabhiramaswami v. S. Hanymayya and Others* **AIR 1959 SC 57**, the Hon'ble Apex Court observed that the provisions of Section 100 CPC are clear and unambiguous. There is no jurisdiction to

entertain a second appeal on the ground of findings of fact. 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*, the Hon'ble Apex Court has taken a view that second appeal cannot be entertained if there is no substantial question of law involved therein.

Accordingly, 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 31, 2016
“DK”