

RSA No. 2934 of 2014(O&M)

1

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 2934 of 2014 (O&M)

Date of decision : May 27, 2016

Vasu Ram(deceased through L.Rs)

..... Appellant

Versus

Satbir Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr. Ram Pal Verma, Advocate
for the appellant.**

**Mr. N. C. Kinra, Advocate
for the respondent.**

- 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?**

Amit Rawal, J (oral).

The appellant-defendant is aggrieved of the judgment and decree rendered by the lower appellate court whereby judgment and decree of the trial court dismissing the suit in toto has been modified and respondent-plaintiff has been held entitled to receive ₹4 lacs from the defendant along with interest @ 24% from the date of receipt of amount till realization.

Mr. Ram Pal Verma, learned counsel appearing on behalf of the appellant submits that the lower appellate court in a most erroneous and fallacious manner mis-read the statement of appellant-defendant and misconstrued it as an admission with regard to the receipt of earnest money.

He further submits that as per the case set up by the respondent-plaintiff an agreement to sell dated 1.10.2004 alleged to have been executed was in respect of suit land against the payment of earnest money of ₹1,40,000/- against the total sale consideration of ₹2,60,000/- per acre. The stipulated date for execution and registration of the sale deed was 15.6.2005 and the balance sale consideration was to be paid by the plaintiff at the time of execution and registration of the agreement to sell. On 17.11.2004 a sum of ₹2,60,000/- was allegedly given by the plaintiff to the defendant whereas categorical case of the appellant-defendant is that the agreement to sell was never executed nor any earnest money had been received rather it was stated that plaintiff must have obtained a thumb impression of the defendant on blank papers by taking the benefit of old age and illiteracy. During the course of hearing he has read the cross-examination of DW-1 Vasu Ram defendant to show that there is no single

piece of evidence with regard to receipt of earnest money, thus the alleged finding of ordering for the refund of amount of ₹4 lacs along with interest @ 24% without there being any commercial transaction is not only preposterous but arbitrary, thus urges this court for formulating following substantial questions of law:-

1. Whether the judgment and decree of the lower appellate court being the last court of fact and law misconstrued and mis-read the statement of DW-1 is sustainable in the eyes of law?
2. Whether the lower appellate court could have ordered interest @24% per annum.

Mr. N. C. Kinra, learned counsel appearing on behalf of the respondent submits that defendant has failed to lead any evidence to show that it was a loan transaction and the alleged documents were signed as a security for purpose of obtaining loan. No doubt the lower appellate court did not exercise discretion under Section 20 of the Specific Relief Act, 1963 but found that once there is admission of the defendant with regard to the amount aforementioned, decreed the suit, thus urges for affirming the finding rendered by the lower appellate court.

I have heard learned counsel for the parties, appraised the paper book and of the view that on going through the statement of DW1

which was read over during the course of hearing in the open court, in the presence of the counsel for the respondent, and found no where there is admission with regard to receipt of money. Once the court found that the agreement to sell was not written, the question of payment of earnest money ought not to have found cause. The lower appellate court totally mis-read the statement of defendant in accepting the alleged loan of ₹1,40,000/- . On 1.10.2004 the agreement to sell was agreed to be executed. On 17.11.2004 a sum of ₹2,60,000/- was allegedly given by the plaintiff-respondent to defendant-appellant. Accordingly the finding of the lower appellate court holding the plaintiff entitled to ₹4 lacs along with interest @ 24% per annum is hereby set aside and that of the trial court is restored back. Resultantly the questions of law framed above are answered in favour of the appellant-defendant and against the respondent-plaintiff.

The appeal stands allowed.

(AMIT RAWAL)

JUDGE

May 27, 2016
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