

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 894 of 2016 (O&M)

Date of Decision: 26.05.2016

Ram

... Appellant(s)

Versus

Surjit Kaur alias Sukhjit Kaur

... 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. Arun Jain, Senior Advocate
with Mr. Amit Jain, Advocate
for the appellant(s).

Mr. Vijay Lath, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present regular second appeal, filed by the plaintiff, against the judgment & decree dated 30.10.2015, passed by learned District Judge, Rupnagar, whereby judgment & decree dated 29.8.2014, passed by learned Civil Judge (Junior Division), Anandpur Sahib was set aside.

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

execution of the sale deed was fixed to be 5.11.2009. As per plaintiff, defendant failed to execute the sale deed in favour of the plaintiff on or before 5.11.2009. On request of defendant, the time for getting the sale deed executed was extended upto 15.1.2010 and then upto 18.2.2010 and endorsements to that effect were made on reverse of first page of agreement of sale. Thereafter, on 16.2.2010, son of defendant received a sum of ₹ 4,00,000/- in presence of Dr. Manoj Kaushal, on behalf of his mother and made endorsement on the reverse of second page of agreement of sale. However, the above endorsement dated 16.2.2010 could not be typed in the legal notice and reminder, inadvertently. The sale deed was to be executed on 18.2.2010. Plaintiff visited the office of Sub Registrar, Anandpur Sahib along with balance sale consideration and stamp paper, but defendant did not turn up to get the sale deed executed. Plaintiff got his presence marked by way of affidavit. Oral requests to get the sale deed executed was of no avail. Legal notice was issued on 10.3.2010, but no reply was received. Reminder was also issued on 20.4.2010 to the defendant and again no reply was received and as such necessity of the suit.

Defendant contested the suit *inter alia* taking the plea and admitting the factum of execution of agreement of sale dated 4.6.2009 and receipt of ₹ 4,00,000/- as earnest money. As per defendant, plaintiff was not ready and willing to get the sale deed executed on the target date i.e. 5.11.2009 and on the request of plaintiff, date was extended upto 15.1.2010. Again on 15.1.2010, defendant was present in the office of Sub Registrar, Anandpur Sahib to get the sale deed executed but plaintiff had shown his inability as the balance sale consideration was not ready with him and date

was extended upto 18.2.2010. On that day, defendant along with her father

Jarnail Singh and Nirmal Singh, Numberdar as well as Sarpanch of the village visited the office of Sub Registrar, Anandpur Sahib. But the plaintiff failed to turn up and defendant got her presence marked by way of affidavit and as such earnest money of ₹ 4,00,000/- stood forfeited. As per defendant, plaintiff wrongly claimed that a sum of ₹ 4,00,000/- was received by her son in the presence of witness Dr. Manoj Kaushal. The said endorsement was made in connivance with Dr. Manoj Kaushal. More so, legal notice sent by the plaintiff never disclosed this particular transaction regarding money given to her son. On 18.2.2010, plaintiff was not ready with the balance sale consideration and had not visited the office of Sub Registrar, Anandpur Sahib. Thus, suit of the plaintiff is without any merit and the same deserves dismissal.

On these facts, issues were framed by the Court of first instance and parties were asked to lead their respective evidence. The Court of first instance, after recording of evidence and appreciation thereof, returned the findings in favour of the plaintiff that agreement was duly executed and defendant had not come forward to get the sale deed executed and as such, plaintiff was entitled to seek specific performance of the agreement of sale. Defendant preferred first appeal and first Appellate Court reversed the findings of the Court of first instance by setting aside its judgment & decree, resulting into dismissal of the suit of the plaintiff and as such regular second appeal before this Court.

Learned senior counsel for the appellant, while assailing the findings recorded by the first Appellate Court, submitted that execution of agreement of sale dated 4.6.2009 has been duly proved on the file and this

extended with mutual consent of the parties and this fact was recorded on the reverse side of the first page of the agreement and the same was signed by defendant. Again on 16.2.2010, cash payment of ₹ 4,00,000/- was received by Harkamal Singh, son of Surjeet Kaur alias Sukhjit Kaur-defendant in the presence of Dr. Manoj Kaushal and target date was fixed. Plaintiff was ready and willing to perform his part of the agreement and for that purpose, he had visited the office of Sub Registrar, Anandpur Sahib on 18.2.2010 but the defendant failed to put in appearance and plaintiff got his affidavit attested in token of his presence. But the Court of first instance completely ignored this fact and the said findings are liable to be set aside.

Learned counsel for the respondent submitted that first Appellate Court has rightly recorded the findings that plaintiff was not ready with the balance sale consideration and that is why target date for execution of the sale deed was extended onwards. There is no material or evidence available on the file to show that payment of ₹ 4,00,000/- was made on 16.2.2010. The first Appellate Court has rightly appreciated the fact that no man of ordinary prudence would make payment of ₹ 4,00,000/- to the minor son, aged about 15 years, who is not even signatory to the agreement. If at all, payment of ₹ 4,00,000/- was to be made and any extension was sought, then defendant-Surjeet Kaur alias Sukhjit Kaur should have been approached and payment should have been made only to her and not to her minor son. That way, plaintiff has not come to the Court with clean hands and as such he is not entitled to seek discretionary relief because conduct always plays an important role in the matter of exercise of discretionary jurisdiction of the Court of law. On this point, reliance has been placed upon the judgment

Bhagwandas S. Patel & Others 2009 AIR (SC) 1749.

Learned counsel for the respondent also submitted that by making alterations, plaintiff tried to forge the instrument which otherwise could not pass test of genuineness with tough scrutiny of law, which renders the agreement *void ab initio*. On this point, reliance has been placed upon the judgment rendered by Allahabad High Court in ***Sardar and Another v. Ram Khilauna and Others 1997(1) CivCC 498.***

Learned counsel for the respondent also submitted that a purchaser, who does not have the money required for payment of balance sale consideration, he cannot be considered as a person “ready and willing” to perform his part of agreement. On this point, reliance was placed upon the view taken by the Division Bench of Kerala High Court in ***Vinodan v. Sunil Kumar and Others 2015 AIR CC 1962.***

Having considered the submissions made by learned counsel for the parties and appraisal of the record of the case and grounds of appeal, this Court is of the considered view that most of the facts are not disputed that agreement of sale dated 4.6.2009 (Ex.P1) was duly executed and the same has been proved on the file. Target date for execution of the sale deed was 5.11.2009. The said date was extended from 5.11.2009 to 15.1.2010 and again extended to 18.2.2010.

The real controversy is regarding payment of ₹ 4,00,000 having been made to Harkamal Singh, minor son of defendant on 16.2.2010 by the plaintiff in presence of Dr. Manoj Kaushal. The said witness i.e. Dr. Manoj Kaushal (PW.2) does not appear to be true witness because he deposed that he was not aware about the name of husband of defendant-Surjeet Kaur alias

family members. As per PW.2, minor son of defendant was introduced by the plaintiff, who was not known to him earlier.

The first Appellate Court has rightly observed that this is an act of fraud for more than one reason. Firstly, there was no reason for the plaintiff to make substantial payment of ₹ 4,00,000/- in cash to minor son of defendant, especially when he was not privy to the agreement. Earlier, the extension of time was granted after obtaining signatures of defendant-Surjeet Kaur alias Sukhjit Kaur on the reverse of agreement of sale itself and if any payment was actually to be made on 16.2.2010, the same should have been made to the defendant only against her signatures as that was the important document. But that has not been done and this does not reflect the conduct of the plaintiff to be above board and the same amounts to forgery of the agreement. On this ground alone, plaintiff is not entitled to seek exercise of discretionary jurisdiction of the Court in his favour. On this point, reliance is placed upon the judgment rendered by the Hon'ble Apex Court in case ***G.Jayashree & Others v. Bhagwamdas S. Patel*** (*supra*).

More so, the factum of making payment of ₹ 4,00,000/- to the minor son of defendant on 16.2.2010 was not mentioned in the legal notice which was admittedly issued after that date. Again, the said fact was not mentioned in the legal notice dated 10.3.2010 (Ex.P4) nor the same was referred to in the reminder dated 20.4.2010 (Annexure P7). More so, in this case plaintiff has failed to show that he was ready and willing to perform his part of agreement and he was ready with balance sale consideration. Admittedly, he had not purchased the stamp paper for getting the sale deed executed on 18.2.2010.

the observations, thereby reversing the findings recorded by the Court of first instance. Thus, there is no substantial question of law involved in the present appeal.

In *Deity Pattabhiramaswami v. S. Hanyamaya 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 26, 2016
“DK”