

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 5816 of 2015(O&M)
Date of decision : January 15, 2016

Nirvair Singh (deceased) through L.Rs

..... Appellants

Versus

Jasvir Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R. S. Randhawa, Advocate
for the appellants.

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).

CM No. 14423-C of 2015

This is an application under Section 149 read with Section 151 CPC for making good the deficiency in court fees.

The application is allowed.

Permission granted to make good the deficiency in court fee.

RSA No. 5816 of 2015(O&M)

The appellants-defendants are in Regular Second Appeal against concurrent finding of fact whereby the suit for specific performance of the agreement to sell in respect of Kothi No. 500 measuring 192.5 sq. yards situated in Phase VI, Sector 56, SAS Nagar, Mohali has been decreed and he has been called upon to execute and

register the sale deed on receipt of the balance sale consideration which has already been deposited.

Learned counsel for the appellants in support of his contentions has raised multi fold arguments which are enumerated hereinbelow:-

i) The agreement to sell dated 9.3.2004 was admitted to have been executed not with the plaintiffs, but with one Jaspinder Singh.

ii) The same was cancelled on 29.6.2004 vide Ex. DW1/4 whereby Jaspinder Singh received a sum of ₹1,30,000/- and remaining amount was to be returned in installments.

iii) The agreement also contained interpolation which has been proved through the testimony of document expert.

iv) Before the appellate court provisions of Explanation II of Section 20 of Specific Relief Act, 1963 was pleaded but the same has not been dealt with, pragmatically.

v) The receipt of ₹2,50,000/- dated 24.4.2004 was seriously disputed.

vi) The vendor during the pendency of the appeal stated that he is the only bread winner of the family and it is the only house where the appellant-L.Rs of the appellant are residing, therefore it would result into great hardship.

vii) The readiness and willingness on the part of the respondents-plaintiffs was conspicuously wanting as it failed to prove the availability of ready cash at the time of execution and registration of the sale deed.

The aforementioned facts have not been noticed by both the courts below, therefore there is illegality and perversity in the impugned orders, much less, substantial question of law arise for determination by this Court.

I have heard learned counsel for the appellants and appraised the paper book of and of the view that the appeal is dismissed for the following reasons:-

The agreement to sell has been executed with the vendor and the plaintiffs. Jaspinder Singh is not a party though he is a relative of the plaintiff. The appellants-defendants have not been able to lead elaborative evidence with regard to the cancellation of the agreement and receipt of ₹1,30,000/-, therefore, it may be a different transaction. The plea that Jaspinder Singh after furnishing evidence has not appeared in the witness box pales into insignificance, for the reason that the defendants had been relying upon the cancellation of the agreement. Nothing prevented the defendants to summon him and confront with the cancellation by proving his signatures on the cancellation viz-a-viz the admitted signatures. Explanation-I to Section 20 of The Specific Relief Act, 1963 do not prescribe that inadequate consideration would be a ground for not granting discretionary relief under Section 20 of the Act. The stipulated date for the agreement to sell was 30.06.2004. The suit was instituted on 14.10.2004. The respondents-plaintiffs have examined document expert Devendra Prasad-PW-8 who deposed that the signatures with micro tip pen having black ink according to him are of Nirvair Singh and was written after the body

of writing of the receipt Ex.P-4 written with ball point pen having blue ink whereas Kranti K Sharma document expert at the instance of defendant in cross examination stated that he did not examine intersection which fact has been noticed by the lower appellate court while dismissing the appeal. Viz-a-viz plea of hardship, I am of the view that Explanation-I of Section 20 of the Act would not come to the rescue of the defendants, as none of the acts of the plaintiffs have been proved or pleaded.

Keeping in view the aforementioned reasons, I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgments and decrees of the both the courts below.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

January 15 , 2016
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