

In the High Court of Punjab and Haryana at Chandigarh

RSA No.6006 of 2015(O&M)

Date of Decision:12.2.2016

Manmohan Singh

---Appellant

vs.

Shiv Deep and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. M.S.Bhatti, Advocate
for the appellant

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

Rekha Mittal, J.

CM No. 15000-C of 2015

Prayer in this application is for condoning delay of 19 days in refiling the appeal.

For the reasons stated in the application and arguments advanced by counsel for the appellant, the application is allowed and delay of 19 days in refiling the appeal is condoned.

RSA No. 6006 of 2015(O&M)

The present regular second appeal has been directed against

the judgment and decree dated 6.5.2015 passed by the Additional District Judge, Amritsar, affirming the judgment and decree passed by the learned trial court whereby the suit filed by respondent No. 1 for possession by way of specific performance of the agreement to sell dated 27.8.2008 in respect of land measuring 10 marlas, detailed in the head note of the plaint, has been partly allowed by granting alternative relief of recovery of earnest money of Rs. 2,96,000/- with interest at the rate of 6% per annum from the date of agreement till realization of the decretal amount.

Shiv Deep Singh, respondent No. 1 filed a suit on the premise that Manmohan Singh appellant entered into an agreement to sell dated 27.8.2008 in respect of the suit land for a sale consideration of Rs. 5 lacs and Rs. 2,96,000/- were paid as earnest money. The appellant executed the agreement in the presence of attesting witnesses namely Sukhwinder Singh and Jaswinderjit Singh. The sale deed was agreed to be executed on 27.8.2009 and possession of the property was also agreed to be delivered at the time of registration of the sale deed. The respondent remained present in the office of the Sub Registrar, Ajnala alongwith balance sale consideration and other charges on the stipulated date but the appellant did not turn up. The respondent requested the appellant to execute the sale deed on receipt of balance sale consideration but he refused to do so.

The appellant/defendant No. 1 filed the written statement, challenged maintainability of the suit; suit being not properly valued; the agreement is forged and fabricated and the suit being barred by time. It is pleaded that the appellant is not owner of the suit property and the agreement has been forged by the respondent in connivance with the

witnesses.

The proforma respondent joined the proceedings in pursuance of his application under Order I Rule 10 of the Code of Civil Procedure (in short “CPC”) having been allowed by the Court. He filed the written statement that he is a bona fide purchaser for consideration without notice of the alleged agreement propounded by respondent No. 1.

The learned trial court, on consideration of the pleadings of the parties, issues framed for determination, evidence adduced on record and the rival submissions made by their respective counsel accepted claim of respondent No. 1 that the appellant executed the agreement in question and the proposed vendee always remained ready and willing to perform his part of the agreement but allowed alternative relief for refund of earnest money alongwith interest, noticed hereinbefore. The judgment passed by the trial court was affirmed in appeal.

Still feeling dissatisfied, the present appeal has been preferred by the unsuccessful appellant/defendant No. 1.

Counsel for the appellant would contend that the agreement dated 27.8.2008, set up by respondent No. 1 was never executed by the appellant as the same has been forged by respondent No. 1 in connivance with the attesting witnesses namely Sukhwinder Singh PW2 and Jaswinderjit Singh PW3. To bring home his contention, it is argued that respondent No. 1 did not get the disputed signatures on the agreement to sell compared with standard/sample signatures of the appellant, by an handwriting expert. There are material contradictions in the statements of witnesses examined to prove the agreement. It is further argued that as Shiv

Deep Singh did not make any enquiries in regard to identity of the property in question as elicited during his cross examination, it is sufficient to hold that the agreement is not genuine. Counsel has pointed out that Shiv Deep Singh PW1 and Jaswinderjit Singh PW3 have contradicted each other with regard to the time when the agreement was executed and the place at which the alleged payment of Rs. 2,96,000/- towards earnest money was made to the appellant.

I have heard counsel for the appellant and perused the records.

Before advertng to the submissions made by counsel for the appellant, it is pertinent to note that an appeal filed under Section 100 of the CPC can be admitted for hearing in case it raises any substantial question of law. It is not for the court in regular second appeal to re-appreciate the entire evidence to examine correctness and legality of the findings.

When the facts and circumstances of the present case are examined in the light of aforesaid discussion, I am of the considered opinion, that the contradiction pointed out by counsel for the appellant is not sufficient to admit the appeal for final hearing. Respondent No. 1/plaintiff agreed to purchase 10 marlas of land out of total land. As such, failure of respondent No. 1 to make proper enquiries in regard to construction existing on the spot would not make any difference. From the facts elicited during cross examination of respondent No. 1, it cannot be held that the vendee was not aware about the identity of the property in question.

So far as contradiction pointed out by counsel in the statement of Shivdeep Singh PW1 viz-a-viz that of Jaswinderjit Singh, Shiv Deep

Singh has deposed that writing work was completed at 12.30 p.m. and he had handed over an amount of Rs. 2,96,000/- to Jaswinderjit Singh. He further deposed that an amount of Rs. 2 lacs was withdrawn from Punjab National Bank, Ajnala and Rs. 92,000/- had been taken by him from his brother-in-law Jasbir Singh. Sukhwinder Singh PW2, one of the attesting witnesses of agreement has fully corroborated and supported the case of respondent No. 1. Counsel for the appellant has not pointed out any inconsistency much less contradiction in the statement of respondent No. 1 and that of Sukhwinder Singh PW2. Respondent No. 1 also examined the second attesting witness of the agreement Jaswinderjit Singh PW3. The very fact that the respondent examined both the attesting witnesses speaks that the respondent never wanted to hide anything from the Court. Jaswinderjit Singh in his cross examination has deposed that the agreement was made at 4-00 p.m. The money was paid at the car washing shop of Sukhwinder Singh and at the time Manmohan Singh, Shiv Deep Singh, Sukhwinder Singh and he himself were present. Shiv Deep Singh in cross examination has deposed that he handed over the money to Jaswinderjit Singh and not to Manmohan Singh. Jaswinderjit Singh has proved that the money was paid to Manmohan Singh at the shop of Sukhwinder Singh. In this view of the matter, I do not find merit in the contentions of the appellant that there is any such serious contradiction in the case which gives rise to a substantial question of law for adjudication by this Court.

No other point has been argued.

For the foregoing reasons, finding no merit, the appeal is

dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

12.2.2016
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