

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.6358 of 2014 (O&M)

Date of decision : 14.01.2016

Om Parkash

...Appellant

Versus

Smt. Naraini Devi

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Jai Vir Yadav, Advocate for the appellant.

Mr. Manoj Tanwar, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The appellant-defendant is in Regular Second Appeal against the judgment and decree of the lower Appellate Court, whereby suit seeking specific performance of the agreement to sell dated 03.01.2006/09.01.2006, has been decreed, and appellant-defendant was called upon to execute and register the sale deed on receipt of balance sale consideration.

Mr. Jai Vir Yadav, learned counsel appearing on behalf of appellant-defendant submits, that property at the hands of Vendor namely Om Parkash was ancestral in nature, much less, even agreement to sell was denied by stating that it was a loan transaction. Though, respondent-plaintiff has proved the execution of the agreement to sell but the fact remains that the

property is ancestral in nature. The trial Court instead of granting the discretionary relief gave the alternative relief and ordered for refund of ₹2,10,000/- along with interest @ 18% p.a. Since both the parties were aggrieved with the aforementioned findings vis-a-vis interest @ 18% p.a. & the respondent-plaintiff having not granted discretionary relief, filed appeal and cross-objection.

The lower Appellate Court has dismissed the cross-objection but allowed the appeal of the plaintiff by holding that the appellant-defendant, failed to prove the character and nature of the property being ancestral and granted the discretionary relief. The lower Appellate Court being last Court of facts was enjoined upon an obligation to examine documentary evidence i.e. Ex.DW1/A, Ex.DW2/A, Ex.DW6/A but failed to do so, thus, there is mis-appreciation/non-reference of the documentary evidence, thus, such eventuality raises substantial questions of law for determination.

Mr. Manoj Tanwar, learned counsel appearing on behalf of respondent-plaintiff submits that aforementioned documents have been tendered into evidence and not been proved in accordance with law. Even khursinama and excerpt have not been placed on record which is essential requirement of law as per judgment rendered by this Court in *Banta Singh & ors. Vs. Phuman Singh and ors., 1972 PLJ 275* as well as provision of High Court rules and orders. Since, plaintiff has proved the execution of the agreement to sell, the lower Appellate Court has rightly granted the discretionary relief.

I have heard learned counsel for the parties and appraised the paper book.

Ex.DW1/A, Ex.DW2/A and Ex.DW6/A have been only tendered

into evidence and not proved in accordance with law. A presumption is drawn to the aforementioned documents subject to their rebuttal which has not been rebutted by examining any witness from the revenue record. As per the dictum laid down by this Court in the aforementioned case, the appellant-defendant was required to prove the nature of the property being ancestral by examining Kanungo or other revenue officials by placing on record the original excerpts and the Khursinama (pedigree) to show that same very Khatauni and Khasra numbers were the ancestral in nature and had fallen to the share of Om Parkash. In the absence of the aforementioned evidence, the nature and the character of the property being ancestral, has not been proved thus, it would be deemed to self-acquired property.

During the course of hearing, this Court had an occasion to examine the aforementioned documents & on perusal has found that said exhibits do not connect the khatauni and khasra numbers with Jamabandi Ex.D6 for the year 1955-56. The agreement to sell is in respect of land measuring 22 kanal 14 marlas. Since, the respondent-plaintiff has proved the execution of the agreement to sell by examining both the witnesses PW4 and PW5, much less, the readiness and willingness, as suit has been filed on 21.07.2006, in my view, the lower Appellate Court has rightly exercised the discretion as envisaged under Section 20 of the Specific Relief Act.

I do not intend to differ with the findings rendered by the lower Appellate Court.

There is no merit in the appeal.

Accordingly, the same is dismissed.

14.01.2016

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**(AMIT RAWAL)
JUDGE**