

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 6464 of 2014 (O&M)

Date of Decision: 16.03.2016

Rohi Ram

... Appellant(s)

Versus

Vinod Kumar

... 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. Manish Kumar Singla, Advocate
for the appellant(s).

Mr. Vivek Goyal, Advocate
for the caveator/respondent(s).

Shekher Dhawan, J.

Present regular second appeal, filed by the defendant, against concurrent findings of facts having been recorded by both the Courts below in a suit for possession by way of specific performance of agreement of sale dated 17.6.2002 on the basis of which a sum of ₹ 5,00,000/- was received in cash from the plaintiff.

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 a suit for possession of the suit land by way of specific performance or in the alternative suit for recovery of ₹ 6,91,250/- and suit for permanent injunction on the ground that agreement of sale of the suit land for a total consideration of ₹ 5,00,000/- was executed on 17.6.2002 in presence of the witnesses. A sum of ₹ 5,00,000/- was paid in cash which was to be repaid along with interest at the rate of 1.5% per month. The amount was to be repaid by 16.6.2004. As per agreement, if defendant failed to pay the amount along with interest till 16.6.2004, then he would sell his 40 kanals of land to the plaintiff and the principal amount and the interest would be considered as earnest money. However, defendant did not repay the amount along with interest as agreed, which made him liable to execute the sale deed in favour of the plaintiff. The plaintiff was always ready and willing to perform his part of the agreement. For that purpose, legal notice dated 12.4.2004 was issued to the defendant. On 17.6.2004, plaintiff remained present in the office of Sub Registrar, Sunam, to perform his part of the agreement but the defendant failed to turn up. The plaintiff got his presence marked and as such necessity of the suit.

Defendant contested the suit taking the plea that he never agreed to sell the suit property nor he received any earnest money and no interest was settled to be paid. The alleged agreement is a forged and fabricated document. Defendant used to sell his crop through the firm of the plaintiff but plaintiff had not given any account of the crops

and when he asked for the accounts, plaintiff filed the suit. Notice of the plaintiff is on incorrect facts and prayed that suit be dismissed.

On these facts, the Court of first instance settled the issues and parties were asked to lead their respective evidence. The Court of first instance, after appreciating the material and evidence available on the file, decreed the suit for recovery of ₹ 5,00,000/- along with interest at the rate of 12% per annum from 17.6.2002 till the date of decree i.e. 3.8.2011 and future interest at the rate of 6% per annum on the principal amount of ₹ 6,00,000/- till realization. Defendant preferred first appeal but remained unsuccessful and as such present regular second appeal before this Court.

Learned counsel for the appellant, while assailing the findings of both the Courts below, submitted that both the Courts below failed to consider the fact that agreement of sale dated 17.6.002 was the result of fraud and forgery and as such the said findings, recorded by both the Courts below are liable to be set aside and appeal be accepted.

Learned counsel for the caveator/respondent submitted that the execution of agreement of sale has been duly proved on the file and both the Courts below have already recorded concurrent findings of facts. There is no substantial question of law involved in the present appeal. As such, the present regular second appeal is without any merit and legally not maintainable and the same be dismissed.

Having considered the submissions made by learned

counsel for the parties, this Court is of the considered view that the plea of fraud, having been committed by the respondent, has been taken by the appellant. This plea was also taken before both the Courts below. The Courts below have already appreciated the oral as well as documentary evidence and recorded concurrent findings of facts that the agreement was duly executed and the same was not a forged document. The Courts below have rightly held that defendant failed to give any explanation as to how his thumb impressions are there on the agreement and bald statement of the defendant was rightly rejected by the Courts below. More so, defendant has not examined any Document Expert. That way, concurrent findings of facts, having been recorded by both the Courts below, do not call for any interference. There is absolutely no substantial question of law involved in this case.

As per view taken by Hon'ble the Supreme Court in ***Deity Pattabhiramaswami v. S. Hanymayya and Others AIR 1959 SC 57***, the provisions of Section 100 CPC are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground of finding of fact. As per view taken by Hon'ble the Apex Court 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***, second appeal cannot be entertained if there is no substantial question of law involved therein.

Hence, in view of the above, the present appeal is not maintainable as per the provisions of Section 100 of the Code of Civil Procedure, 1908 and stands dismissed.

(Shekher Dhawan)
Judge

March 16, 2016

"DK"