

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

107

RSA No. 4568 of 2013 (O & M)

Date of decision :25.10.2017

Karan Singh

...Appellant

Versus

Santosh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pritam Saini, Advocate
for the appellant.

Mr. C.B. Goel, Advocate
for the respondent.

ANIL KSHETARPAL, J.(Oral)

Plaintiff-appellant is in regular second appeal against concurrent findings of fact recorded against him.

In the considered opinion of this Court following substantial question of law arises in this appeal:-

Whether the judgments passed by the Courts below are result of non-reading and misreading of evidence?

It is not in dispute that the defendant is owner of certain property. Karan Singh (appellant) had filed a suit for permanent injunction claiming himself to be a tenant over a specific portion of the property in dispute. During the pendency of the aforesaid suit, Karan Singh (appellant) and Santosh (defendant) entered into an agreement to sell (Ex.P-1 on the file) with respect to a part of the house i.e. 54 square yards for a total sum of Rs.3,11,000/-. The agreement to sell is in writing-attested by the son of Santosh namely Shri S.K. Sharma, Advocate. Plaintiff had paid a sum of Rs.30,000/- as earnest money.

On 28.10.2005, Karan Singh made a statement in the Court that parties have entered into a compromise and Santosh has agreed to sell a part of the property pursuant to the agreement Ex.P1, hence, he seeks permission to withdraw the suit. On the same day, counsel representing Santosh (defendant in the previous suit and in this suit) accepted the statement given by Karan Singh and admitted it to be correct. The statement given by Karan Singh is Ex.P14 on the file whereas statement given by the counsel representing Santosh is Ex.P15 on the file.

However, thereafter Santosh became dishonest. She did not honour the agreement to sell forcing Karan Singh (plaintiff-appellant) to file a suit for specific performance of the agreement to sell dated 24.10.2005. In the written statement, defendant denied execution of the agreement.

Both the Courts doubted the genuineness of the agreement on following grounds:

1. It is not proved as to who had typed the agreement. No reason is forthcoming as to why the agreement to sell was not got typed from a regular scribe.

2. Agreement to sell is executed on a stamp paper, however, the stamp vendor has not been produced in the Court.

3. Learned First Appellate Court further went ahead and stated that he compared signatures of Santosh on the Vakalatnama and on the agreement to sell, however, these signature do not tally. There are some cuttings on the agreement to sell.

In the considered opinion of this Court, the findings arrived at

by the Courts are wholly erroneous and result of misreading of evidence.

Courts below have not noticed some salient features of this litigation, i.e.;

1. The execution of the agreement to sell is admitted in the previous litigation, which is Ex.P14 and Ex.P15 on the record. Counsel in the previous suit representing the defendant had admitted the correctness of the agreement to sell.

2. The agreement to sell is signed by son of defendant, who is an Advocate. When he appeared in the witness-box as PW-6 he admitted his signatures, although thereafter, he resiled and supported his mother (Santosh).

3. Second attesting witness i.e. Shri S.K. Raghav another Advocate, who is a colleague lawyer of son of the defendant has supported the case of the plaintiff and admitted that agreement to sell was executed between the parties.

4. Santosh (defendant) is a wholly dishonest person. She has gone to the extent of denying the fact that she does not know, who is Karan Singh, although, Karan Singh had filed an earlier suit against her claiming to be tenant under her.

The agreement to sell is duly signed by the parties. The plaintiff, who has set up the agreement to sell is not required to prove the agreement to sell like a testamentary document. Agreement to sell is a contract between the parties in writing. The agreement to sell is also not

required to be attested by the marginal witnesses. Courts are not required to ignore the agreement on small contradictions in the oral evidence or on the basis of conjectures and surmises.

Both the Courts have totally overlooked these facts while recording the finding as noticed above, therefore, the question of law framed is answered in favour of the plaintiff. The suit filed by the plaintiff is decreed with a cost of Rs.25,000/-.

Appellant shall deposit the remaining balance sale consideration within a period of 2 months along with interest at the rate of 9% per annum from the date of institution of suit till the date of deposit.

Hence, this regular second appeal is allowed.

25.10.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : Yes