IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2835 of 2016 (O&M)
Date of decision : 07.12.2017

Dalip Singh

...Appellant

Versus

Samupran Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Munish Gupta, Advocate for the appellant.

Mr. S.S. Grewal, Advocate for the respondent.

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ANIL KSHETARPAL, J. (ORAL)

The plaintiff is in Regular Second Appeal against the judgments passed by the Courts below

At the time of first hearing, learned counsel for the appellant had contended as under:-

> *"Learned counsel for the appellant, inter alia, submits that as a matter of fact, the house in question being common to both agreements dated 25.08.1998 and 14.09.1998, that in itself would show that the second agreement was in supersession of the first one, even if there was no specific reference to the Ist agreement in the second agreement. Secondly, it is seen that in the agreement dated 14.09.1988, the following recital is contained towards the end of agreement "this is our first statement". Therefore, learned counsel for the appellant submits that the learned First*

Appellate Court erred in construing that both the agreements were independent of each other and that the mortgage money in consideration of which the suit property was mortgage, as recited in each of the two agreements, was separately payable.

Notice of motion be issued to the respondent, returnable on 12.07.2016.

Process ***dasti*** *also."*

The only issue argued before me is that there were two agreements to mortgage the property, first on 26.08.1998 and second on 14.09.1998. Both the agreements have been placed in the paper book. Both the agreements are separate and do not make a reference to each other. Through the first agreement to mortgage, house was sought to be mortgaged for a sum of ₹1,20,000/-, out of which ₹1,14,000/- was paid and remaining ₹6,000/- was to be paid on the date of execution of the mortgage deed i.e. on 25.08.1999. In the second agreement to mortgage i.e. 14.09.1998, the plaintiff had agreed to mortgage the house and four shops for a sum of ₹1,80,000/-, out of which ₹1,74,000/- was paid in cash and remaining ₹6,000/- was to be paid on the execution and registration of the mortgage deed i.e. 25.08.1999.

Learned First Appellate Court after examining both the agreements has held that the defendant is entitled to refund of ₹1,14,000/- + ₹1,74,000/-.

Learned counsel for the appellant has vehemently argued that in fact the second agreement to mortgage is in fact superseding the first one. He submits that the learned First Appellate Court has committed error in ordering refund of the amount received under both the agreements.

I have considered the submissions. However, I do not find any substance in it. Both the agreements are written documents. From the reading of both the documents, it is clear that second agreement is not in supersession of first one. In fact, there is no reference to the first agreement dated 26.08.1998 in the subsequent agreement dated 14.09.1998. Still further, it is clearly recorded in the second agreement that the plaintiff has received a sum of ₹1,74,000/- in cash on that day.

In view of this, it is clear that the argument of the learned counsel is not correct.

Although, learned counsel for the appellant has made a reference to the affidavit and the assertions made in the written statement, wherein it is recorded that the defendant was ready to pay the balance amount of ₹6,000/- and execute the mortgage deed, however, these documents cannot lead to the conclusion that 2nd agreement to mortgage was in supersession of 1st one.

In the considered opinion of this Court, such inference cannot be drawn particularly when the terms of the agreements are clear.

Learned counsel for the appellant in the last has submitted that the learned First Appellate Court has committed error in ordering the refund of the amount alongwith interest, although there was no agreement.

Learned counsel for the respondent does not dispute this position.

Taking into consideration the aforesaid facts, the Regular Second Appeal is partly accepted.

The order passed by the learned First Appellate Court to pay interest on the refund shall stands deleted. However, the appellant shall be liable to refund of ₹1,14,000/- + ₹1,74,000/- on account of the agreements to mortgage dated 26.08.1998 and 14.09.1998.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

07.12.2017 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No