

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 2791 of 2015 (O&M)

Date of decision : December 06, 2017

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Smt. Vijay Laxmi

.....Appellant

Versus

Chhail Bihari Sharma

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Subhash Rana, Advocate for
Mr. Sanjeev Kumar Panwar, Advocate for the appellant

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RITU BAHRI, J.

C.M No. 6920-C of 2015

C.M is allowed as prayed for.

C.M No. 6921-C of 2015

Prayer made in the application is for condonation of delay of 6 days in filing the present appeal.

C.M is allowed. Delay of 6 days in filing the present appeal is hereby condoned.

RSA No. 2791 of 2015

The appellant has come up in the present regular second appeal against the judgment and decree dated 17.12.2014 passed by the Additional District Judge, Faridabad, whereby the appeal against the judgment and

decree dated 19.12.2013 passed by the Additional Civil Judge (Sr. Divn.) Faridabad has been dismissed. Vide the judgment of the trial Court, suit filed by the respondent-plaintiff against the appellant-defendant was decreed and the appellant-defendant was directed to execute and get registered a sale deed qua the suit property on receiving a sum of Rs.4,00,000/- i.e the remaining sales consideration with proportionate costs.

Briefly stated, the facts of the case, are that the respondent-plaintiff filed a suit for specific performance of agreement dated 16.11.2009 against appellant-defendant on the averments that the appellant-defendant being the owner of house detailed in para no.1 of the plaint entered into an agreement to sell with the respondent-plaintiff on 16.11.2009 for a total sale consideration of Rs.9,50,000/-. The respondent paid a sum of Rs.4,00,000/- at the time of execution of agreement to sell and the balance was to be paid at the time of execution of the sale deed which was to be registered up to 31.3.2010. It was agreed that in case the appellant-defendant failed to get the sale deed executed in favour of the respondent-plaintiff, then the respondent-plaintiff would be entitled to get the same executed through court of law. On 7.12.2009, the appellant-defendant came to the respondent-plaintiff and received further Rs.50,000/- in cash and executed a receipt in this regard. Defendant no.2 Dharam Pal, being husband of the appellant-defendant Smt. Vijay Laxmi asked the respondent-plaintiff to deposit Rs.35,000/- in his name. Accordingly, the respondent-plaintiff deposited the same amount in his name. The appellant-defendant further asked the respondent-plaintiff to deposit Rs.25,000/- in the account of defendant no.2 on 18.12.2009. He again directed respondent-plaintiff to deposit an amount of Rs.25,000 in the said account and that amount was

also deposited by the respondent-plaintiff on 28.12.2009. Appellant-defendant also received a part payment of Rs.1,00,000/-. Thereafter, the appellant-defendant asked the respondent-plaintiff to deposit the balance amount in the bank account of defendant no.2 and accordingly, he deposited Rs.49,000/- on 7.1.2010, Rs.25,000/- on 11.1.2010 and Rs.25,000/- as balance amount of sale consideration on 19.1.2010. Thus the respondent-plaintiff had paid Rs.7,34,000/- as sales consideration to the appellant-defendant and there was balance of Rs.2,16,000/-. As per the plaint, on 31.3.2010, the respondent-plaintiff came to the office of Sub Registrar, Faridabad with the balance sale consideration of Rs.2,16,000/- and expenses for registration of the sale deed and waited for whole of the day but the appellant-defendant did not turn up. Hence the suit was filed.

The suit was contested by the appellant-defendant. It was denied that the appellant-defendant ever executed any agreement to sell dated 16.11.2009 in favour of the respondent-plaintiff. Dismissal of the suit was prayed.

After framing of issues and going through the evidence on record, trial Court gave a concurrent finding of fact that as per the documents Ex.P-1 to P-4, the appellant-defendant no.1 had received a sum of Rs.5,50,000/- from the respondent-plaintiff. Defendant no.2 in cross examination deposed that he acquiesced that money had changed hands in his presence and also admitted that sale deed Ex.P-16 is pertaining to his house. The suit for specific performance of the agreement dated 16.11.2009 was decreed in favour of the respondent-plaintiff subject to payment of the remaining amount of Rs.4,00,000/- and other incidental charges. It was held that payment of a sum of Rs.1,84,000/- to defendant

no.2, husband of defendant no.1 could not be adjusted towards the consideration of the house, as no relief was claimed against the husband and appellant-defendant no.1 had only received a sum of Rs.5,50,000/- from the respondent-plaintiff.

Aggrieved with the order of the trial Court, the appellant-defendant filed appeal before the lower appellate Court.

The Lower Appellate Court while dismissing the appeal observed that there was no evidence led by the appellant-defendant no.1 to show that the agreement in question was executed to secure a loan. Keeping in view that the amount of Rs.5,50,000/- had been received by the appellant-defendant from the respondent-plaintiff in various installments as per Ex.P-1 to Ex.P-4, the appeal against the judgment of the trial Court was held to be devoid of merits and resultantly dismissed.

Heard counsel for the parties. After going through the judgments passed by the Courts below, no ground is made out to interfere. Hence the present regular second appeal is hereby dismissed.

06.12.2017

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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	/No