

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

RSA No. 6259 of 2015 (O&M)
Date of Decision: 25.10.2017

Avnish Sood

.....Appellant(s)

Versus

Inderjit Pal @ Inderjit Singh and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. R. Kartikeya, Advocate
for the appellant.

RAJBIR SEHRAWAT, J. (Oral)

CM No.15793-C of 2015

This is an application for condonation of delay of 16 days in re-filing the appeal. For the reasons mentioned in the application, same is allowed and delay of 16 days in re-filing the appeal is condoned.

CM No.15794-C of 2015

This is an application for condonation of delay of 13 days in filing the appeal. For the reasons mentioned in the application, same is allowed and delay of 13 days in filing the appeal is condoned.

RSA No. 6259 of 2015

This is a second appeal filed by the plaintiff against the concurrent judgments and decrees passed by the trial Court and the lower Appellate Court; whereby suit filed by the present appellant was dismissed and the appeal was also dismissed.

For convenience, the parties would be referred herein as plaintiff and defendants as they were in the original suit.

The brief facts of the case are that the defendant No.1 is the owner of 9.5 marla of the land, i.e. half share out of the 19/45 share in the land measuring, 2 kanal 5 marlas comprised in khasra No.4296/580 situated in the area of Premgarh, Tehsil & District Hoshiarpur. It was alleged that on 15.04.2001, the defendant No.1 orally entered into agreement to sell 9.5 marla of the land to the plaintiff for an amount of Rs. 1 lac. The target date for execution of sale deed was fixed to be 10.07.2001. It was further claimed that the defendant No.2-Hari Singh was the friend of the defendant No.1. Therefore, as per the command of the defendant No.1, an amount of Rs.1 lac was paid to defendant No.2 and a written receipt dated 25.04.2001 was got executed by defendant No.2 in the presence of Vishwa Nath, who attested the receipt as a witness. It was further claimed that on the target date, the plaintiff appeared before the Sub-Registrar and got his presence marked before the Sub-Registrar. However, the defendant did not come present to execute the sale deed. Therefore, plaintiff had filed a suit for specific performance for execution of the sale deed; regarding the entire land agreed to be sold.

However, during the pendency of the suit, as per the plaintiff, it transpired that the defendant had already sold the remaining land but only a land measuring 3.25 marla was left with the defendant No.1 as his share. Therefore, the suit was amended by the plaintiff and the claim was revise and the specific performance to the extent of 3.25 marla was sought on adjustment of proportionate consideration for that.

The defendant No.1 contested the suit. Besides raising routine preliminary objections; on merits it is alleged that he never agreed

to sell the land to the plaintiff. It was further claimed that he did not know Hari Singh, who is alleged to have received the said amount. It was further pleaded that Vishwa Nath, the attesting witness of the receipt dated 25.04.2001 is the person of the plaintiff and therefore he is colluding with the plaintiff. It was further claimed that the defendant No.1 has not received any money on account of the alleged agreement. Still further, it was pleaded by the defendant No.1 that the rate of sale of the land in the area is quite high, therefore, he could not even think of selling the land as such a low price; as has been stated by the plaintiff. This itself shows that the agreement and the claimed receipt are manipulated and forged writings.

The parties led their evidence.

After hearing the counsel for the parties and perusing the record, the trial Court dismissed the suit filed by the plaintiff. Aggrieved against that; the plaintiff filed the appeal before the lower Appellate Court. However, the lower Appellate Court also dismissed the appeal filed by the present appellant. While deciding the appeal, the lower Appellate Court has recorded a finding that there are so many contradictions in the statements of all the witnesses that their testimony is hardly left with any credence. Hence, the witnesses were not believable.

In view of this, the lower Appellate Court held that the agreement in question and the receipt of the money by the defendant No.1, has not been proved by the plaintiff. Therefore, the findings recorded by the trial Court were upheld by the lower Appellate Court. Aggrieved against the judgment and decree passed by the lower Appellate Court, the present appeal has been filed.

After having heard learned counsel for the appellant and perusal of the record, this Court is of the considered opinion that there is no perversity in finding and the judgment and decree passed by the Courts below. The Courts have rightly held that the existence of a valid agreement has not been proved on record. The appreciation of the evidence by the Courts below is quite extensive and appropriate and it has rightly been held that the agreement has not been proved as per the requirement of the law. Even, the money claimed to have been paid to defendant No.1, has not been proved to have reached the defendant No.1. In any case, even if it is proved to have been paid to defendant No.2-Hari Singh then also this does not constitute an agreement and an estoppel against the defendant No.1, because it has not been proved on record that the defendant No.2 is authorised by defendant No.1 to receive the amount in lieu of the agreement claimed by the plaintiff. Hence, it is also not proved that any consideration passed hands in the case.

Faced with the situation, learned counsel for the appellant submits that even if it is proved that money has not been received by defendant No.1 then atleast there is a receipt executed by the defendant No.2 for having received Rs.1 lakh. Therefore, the suit may be decreed atleast for recovery of the amount from defendant No.2. However, a perusal of the claim shows that it is not a suit for recovery against defendant No.2; for return of the money. It goes without saying that the present appellant would be at liberty to stake his claim against defendant No.2 and to seek a recovery by initiating separate proceedings in accordance with law and the present suit shall not stand in his way. But in any case, the claimed payment made in this case is not a payment made to the defendant No.1 in lieu of the agreement.

No other argument was raised by learned counsel for the appellant.

In view of the above, the present appeal fails and the same is dismissed being devoid of any merits.

(RAJBIR SEHRAWAT)
JUDGE

25.10.2017
sahil soni

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No