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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RA-RS-88-C-2016 (O&M) in
RSA-2934-2014
Date of decision : 03.05.2017

Vasu Ram (deceased through LRs)

... Petitioner(s)

Versus

Satbir Singh

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Salil Sagar, Senior Advocate with
Mr. N.C. Kinra, Advocate
for the applicant/respondent.

AMIT RAWAL, J. (ORAL)

The present review application has been filed by the applicant-respondent/plaintiff for restoration of the findings given by the lower Appellate Court entitling the plaintiff to refund of the amount of ₹ 4 Lacs along with interest @ 24%, which has been set aside by this Court, on the premise, that while allowing the appeal of the appellant/defendant had not taken into consideration the examination-in-chief of the defendant, who unequivocally and candidly admitted the receipt of the money. In this regard, a reference has been given to the statement of Vasu Ram-defendant by handing over the examination-in-chief submitted in the shape of affidavit and cross-examination.

Mr. Salil Sagar, learned Senior Counsel assisted by Mr. N.C.

Kinra, learned counsel appearing on behalf of the applicant-

respondent/plaintiff submits that such error is apparent on record and therefore, the findings of this Court are liable to be reviewed and the appeal is liable to be dismissed.

I have heard the learned Senior Counsel appearing on behalf of the applicant-respondent/plaintiff and gone through the record and of the view that the case as sought in the trial Court was that the plaintiff had filed the civil suit seeking specific performance of the agreement to sell dated 01.10.2004 in respect of suit land against the payment of earnest money of ₹ 1,40,000/- against the total sale of consideration of ₹ 2,60,000/- per acre. The balance sale consideration was to be paid at the time of the execution and registration of the agreement to sell.

While going through the statement of Vasu Ram-defendant, he has nowhere admitted regarding the payment of the receipt of the amount. For the sake of brevity, his entire examination-in-chief reads as under:-

"1. That I never entered into any agreement to sell with the plaintiff because I never intended to sell the suit land, which is only means to earn the bread for my family. I never received any earnest money from the plaintiff and never executed any receipt or agreement to sell in favour of plaintiff. No document had never been read over to me. The plaintiff is a very cunning and clever person, who has manipulated the agreement of sell by way of playing mal-practice, coercion, fraud upon me as I am a illiterate and old age person and hard of hearing and saying. The plaintiff brought me to Ganaur on a raise pretext to giving surety to the loan with the bank. The plaintiff might have obtain the thumb-impressions on the blank papers with the false pretext of giving surety to the loan amount. As the relation between me and plaintiff were cordial, otherwise, I never believed or agreed to sell my land. The

agreement as alleged is a false, manipulated and unregistered bogus document, which is based upon the fraud, hence the plaintiff is not entitled to claim any relief from the Hon'ble Court. I never executed any second receipt, which is also a manipulated, bogus and fraud document typed on a blank paper. When the plaintiff filed the suit and it came to my knowledge that the suit is based upon a fraud agreement, I moved an application to the police at Mimarpur police post, but the police says that the matter is pending before the court, we cannot do anything and the matter shall be finally adjudicate by the civil court and they did not take any action on my application.

2. That the suit of the plaintiff is also hit by Order 2 Rule 2 of CPC. The plaintiff have an evil eye on my property and want to grab the same under the colour of present false and bogus suit."

There is a specific refusal by the defendant of having received the money from the plaintiff, rather the plaintiff had taken him to Ganaur for giving a surety to the loan with the Bank and in this process, might have obtained the thumb-impressions on the blank papers. Mr. Sagar had vehemently referred to the statement suffered by the defendant in cross-examination that since he had not gone to the Tehsil, therefore, it is deduced that an adverse influence is liable to be drawn in favour of the plaintiff and against the defendant. I am afraid the aforementioned contention, as noticed above, is neither here nor there as the thumb-impression on the receipt of alleged payment has not been proved on record and it has been marked as 'Mark B'. It was incumbent upon the plaintiff to prove the thumb-impression of the defendant. Had the aforementioned onus

been discharged, perhaps this Court would not have entertained the appeal of the defendant and upheld the order of the lower Appellate Court. It is, in this backdrop of the matter, the judgment and decree of the lower Appellate Court was set aside and that of trial Court is restored.

In view of what has been noticed, I am of the view that it is not a fit case where there is an error apparent on record as an attempt is made to re-argue the appeal, which is not permissible in view of the *ratio decidendi* culled out by the Hon'ble Supreme Court in “**Tamilnadu Terminated Full Time Temporary LIC Employees Association Vs. S.K. Roy, The Chairman, Life Insurance Corporation of India and another**” 2016 (9) **SCC 366**. The relevant paragraph of the judgment reads as under:-

"Review is not re-hearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to re-open concluded adjudications. This Court, in Jain Studios Ltd. v. Shin Satellite Public Co. Ltd. (2006) 5 SCC 501, held as under:

11. So far as the grievance of the applicant on merits is concerned, the Learned Counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negated. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications.

The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases."

In view of the aforementioned observation, I do not find any error apparent on the face of record, much less, no ground is made out for interference and accordingly, the present review application stands dismissed.

03.05.2017 Yogesh Sharma	(AMIT RAWAL) JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No