

In the High Court of Punjab and Haryana, at Chandigarh

Review Application No. RS-15-C-2016 (O&M)

Date of Decision: 28.03.2017

Rajwant Singh

... Appellant(s)

Versus

Pawan Kumar

... Respondent(s)

CORAM: Hon'ble Mr. Justice Dr. Shekher Dhawan.

Present: Mr. Sachin Jain, Advocate
for the applicant/appellant.

Mr. R.S.Dhiman, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present review application has been filed by the applicant/appellant under Section 114 CPC read with Order 47 Rule 1 CPC for review of judgment dated 21.1.2016, passed by this Court, on the ground that following substantial questions of law, as detailed in the grounds of appeal i.e. RSA-4270-2014, have not been considered:-

- “A. *Whether both the Courts below were right in allowing the suit of the respondent without stating a word qua which property the judgments and decrees were passed?*
- B. *Whether the suit is liable to be dismissed on account of material contradiction with regard to property in dispute?”*

Learned counsel for the applicant/appellant contended that main suit is for specific performance of agreement of sale dated 25.7.2005 (Ex.P1) and the same agreement is with regard to House No. 166, whereas suit for

specific performance has been filed by the plaintiff claiming sale of house property bearing No. 138. Neither there was any prayer in the suit to consider House No. 138 nor any specific issue was framed on this point. The judgments & decrees, passed by both the Courts below, have not dealt with on this aspect and the same aspect has also been ignored by this Court while passing judgment dated 21.1.2016. Thus, present application be accepted and judgment dated 21.1.2016, passed by this Court, be reviewed.

Learned counsel, representing the non-applicant/respondent, did not chose to file any reply to the application but contended that right from the beginning, the parties were clear regarding subject matter of the agreement. It was so evident from the notice issued to the applicant/appellant regarding execution of agreement of sale dated 25.7.2005 (Ex.P1), wherein boundaries of property of agreement were given, which are as under:-

“West: Bounded by Amrik Singh measuring 66 ft.

East: Measuring 66 ft. and bounded by _____

South: 30 ft. and bounded by Amar Singh.

North: 30 ft. and bounded by Gali”.

Same boundaries had been given in the plaint, filed before the learned trial Court and it was specifically detailed in the plaint as well that the subject matter of agreement was house property, as detailed above and bearing No. 138, which was wrongly written as 166. Written statement was also filed by the applicant/appellant, whereas execution of agreement was duly admitted by the applicant/defendant by simply contending that agreement of sale was

below have also considered all these aspects. This fact also found recorded in the judgment & decree of the learned trial Court regarding description of the property to be House No. 138. More so, this Court recorded a finding that there is no substantial question of law involved in this case and as such regular second appeal was dismissed vide detailed judgment dated 21.1.2016. Thus, present review application is without any merit and the same be dismissed.

Having considered the submissions made by learned counsel for the parties that after execution of agreement of sale on 25.7.2005, written notice was issued to the present applicant/defendant by the non-applicant/plaintiff through his counsel and at that time, the date of agreement was clearly mentioned to be 25.7.2005. The area of the house was measuring 200 square yards and the details of the boundaries were given and there is absolutely no dispute regarding boundaries of the property. There is also no dispute that applicant/defendant has no other house except House No. 138 and as such it was just a typing mistake in the agreement of sale, wherein house number was mentioned to be 166 instead of 138. Thereafter, all these facts were made clear in the plaint and more precisely para No.5 of the plaint, which reads as under:-

“5. That in the agreement to sell dated 25.07.2005, it is inadvertently mentioned that the sale of House No. 166, whereas, in fact the agreement to sell is with respect to House No. 138, the measurement of which including the demarcation has been duly shown in the agreement to sell dated 25.07.2005 including the room, the details of which including boundaries

are given in para 1 supra.”

The applicant/defendant filed written statement simply denying the execution of agreement in toto and both the Courts below returned the findings that agreement was duly executed and this Court also affirmed the said findings by way of present regular second appeal. On the basis of the available record, this Court has recorded clear-cut finding that there was no substantial question of law involved in this case and this fact was recorded in the judgment dated 21.1.2016 as well. Merely taking a plea in the grounds of appeal that there is a substantial question of law, does not mean that controversy really involved any substantial question of law but infact the Court is to see whether any substantial question of law is involved and only then to answer the same. But in the instant case, this Court recorded observation otherwise keeping in view the entire controversy and this plea of learned counsel for the applicant/defendant is also not tenable. In view of the above detailed findings having been recorded by both the Courts below regarding execution of agreement of sale (Ex.P1) which are mainly based on admission in the pleadings by the applicant/defendant and the said findings have been affirmed by this Court vide judgment dated 21.1.2016. There is absolutely no ground for acceptance of present review application and the same stands dismissed.

(Shekher Dhawan)
Judge

March 28, 2017

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No