

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

RSA No.479 of 2010 (O&M)

Date of Decision:15.10.2018

Sajjan Singh

...Appellant

Versus

Ram Kumar

...Respondents

Cross Objections No.21-C of 2010

Sajjan Singh

...Appellant

Versus

Ram Kumar and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.S.K.Garg Narwana, Sr.Advocate with
Mr.Nitin Sachdeva, Advocate for the appellant.
Dr.Parveen Hans, Advocate for cross-objector-respondent(s).

ANIL KSHETARPAL, J.

This order shall stand disposed of RSA No.479 of 2010 as well
as Cross Objections No.21-C of 2010 filed by the respondent.

The plaintiff-appellant is in the Regular Second Appeal against
the concurrent findings of fact arrived at by the courts below, dismissing the
suit for specific performance of the agreement to sell filed by him.

The plaintiff sought specific performance of the agreement to
sell dated 29.5.1995 with respect to land measuring 21 kanals and 2 marlas
for total sale consideration of Rs.1,96,000/- which was stated to have been
paid entirely at the time of agreement to sell itself.

The defendant contested the suit and pleaded that he had engaged Sajjan Singh, Advocate, who is son of the plaintiff and agreement to sell is fabricated and forged on the blank papers bearing thumb impression of the defendant.

Both the courts after appreciation of evidence have found that the agreement to sell as propounded by the plaintiff is surrounded by suspicious circumstances. The learned first appellate court has further found that the evidence of the witnesses produced by the plaintiff is discrepant and there are material contradictions. The plaintiff Ram Chander has stated that the entire sale consideration was paid to the defendant on the same day and possession was taken, however, the plaintiff is silent about the time and place when entire sale consideration was paid, whereas PW-2 Rajmal Malik, the Scribe, has stated that payment was made at his residence but when he was cross-examined he deposed that he could not say whether payment was made at the time of execution of the agreement or not because parties had come to him after settling all the terms. PW-3 Bhupender Singh has stated that payment was made in his presence in his office. Still further, both the courts have found that the agreement to sell and the witnesses examined do not inspire confidence in the court.

Learned senior counsel appearing on behalf of the appellant, although made sincere efforts, however, could not draw attention of the court to any perversity or substantive error in the judgments passed by the courts below. He could not draw attention of the court to any substantive misreading or non-reading of the evidence.

Appellant in the grounds of appeal has proposed following substantial questions of law:-

- (i) Whether the agreement in question, which has been duly proved, could be held to be surrounded by doubts or creation of fraud and misrepresentation?
- (ii) Whether an adverse inference could have been drawn against the defendant/respondent by non-examination of the material witness i.e. plaintiff/respondent himself?
- (iii) Whether the findings and conclusions of the Courts below, in dismissing the suit for specific performance of the land in question are based on conjectures and surmises, besides being perverse?
- (iv) Whether the findings recorded that the plaintiff has not come to the court with clean hands, and thereby suppressed material facts, is wholly perverse?
- (v) Whether the conclusion reached by the learned lower appellate court that the pleadings taken in the written statement filed by the defendant/respondent regarding fraud and misrepresentation, has not been denied, is against the record and thus wholly perverse?
- (vi) Whether the orders/documents sought to be placed on the file by way of additional evidence, were per se admissible in evidence, and moreover reference thereto was even made by the defendant/respondent?

However, on careful perusal thereof, it is apparent that none of the questions framed is a substantial question of law. Any how, let's deal with the questions. The reasons assigned by the courts below are cogent and convincing, therefore, the courts have rightly refused to grant specific

performance of the agreement to sell. As regards, second question, it is well settled that adverse inference can only be drawn if there is no evidence available on the file. In the present case, son of the defendant who was also power of attorney holder has been examined apart from Richhpal DW-2. As regards questions No.(iii) and (iv), it may be mentioned that learned counsel for the appellant could not draw attention of the Court to any substantive error in the findings of the courts below. Even otherwise, questions No.(iii) and (iv) are questions of fact and counsel has failed to show any perversity.

With regard to question No.(v), it will be noted that the courts below, as a matter of fact, have found that the agreement to sell is based upon fraud and misrepresentation. The learned first appellate court has not held that since the facts pleaded in the written statement have not been denied, therefore, fraud and misrepresentation is proved. Both the courts below on appreciation of evidence have found this fact. No doubt in one sentence learned first appellate court recorded the fact that as replication was not filed, hence facts stated in the written statement have not been controverted. However, that one sentence would not make the entire judgment incorrect. The aforesaid observations made by the learned first appellate court are set aside.

As regards question No.(vi), the learned first appellate court has not committed any error in dismissing the application. The learned first appellate court has noticed that the application for additional evidence has been filed after conclusion of the arguments and the evidence by way of additional evidence would have no bearing on result of the case.

In view of the above, there is no ground to interfere with the concurrent findings of fact arrived at by both the courts below. The present

regular second appeal is dismissed.

Since the appeal is dismissed, the cross-objections, which have been filed by the defendant against the order passed by the learned first appellate court, refusing to grant permission to lead additional evidence, does not survive. Hence, cross-objections are also dismissed.

Pending application(s), if any, shall also stand disposed of, in terms thereof.

15.10.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No