

RSA No.231 of 2016 (O&M)

Manoj Kumar
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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

RSA No.231 of 2016 (O&M)

Balwinder Singh

....Appellant

Versus

Ajit Singh

....Respondent

Date of Order: 22.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kamal Narula, Advocate for the appellant.

AMIT RAWAL, J (ORAL)

CM No.8112-C of 2018

Allowed as prayed for.

CM No.8113-C of 2018

Prayer in the instant application is for recalling order dated 06.3.2018 passed by this Court whereby the main appeal was dismissed for non-prosecution.

After hearing learned counsel for the appellant and perusing the reasons mentioned in the application, the same is allowed. Order dated 06.3.2018 is recalled and the appeal bearing RSA No.231 of 2016 is restored to be taken up today itself.

RSA No.231 of 2016 (O&M)

Defendant-appellant is in second appeal aggrieved of concurrent judgments and decrees passed by both the courts below whereby suit of the plaintiff-respondent for specific performance of agreement to sell dated 18.12.2008 in respect of the suit property, has been decreed vide

judgment and decree dated 04.9.2014 passed by learned Civil Judge (Jr. Division), Zira and affirmed in appeal by the lower Appellate Court vide judgment and decree dated 03.11.2015 passed by learned District Judge, Ferozepur.

Respondent-plaintiff instituted the suit on 29.5.2012 for execution and registration of sale deed by claiming specific performance of agreement to sell in respect of land measuring 8 kanal 00 marlas (hereinafter to be referred as “suit property”). Defendant had agreed to sell the suit property for total sale consideration of Rs.5,00,000/- and received Rs.1,60,000/- as earnest money from the plaintiff. Stipulated date for execution and registration of sale deed was fixed as 15.12.2009, which was orally extended to 30.4.2010. As per the averments in the plaint, plaintiff had been contacting the defendant for execution of sale deed but in vain.

Upon notice, the suit was contested by the defendant-appellant by denying the agreement to sell, who rather came out with the stand that it was a loan transaction of Rs.1,50,000/- on interest basis. Blank stamp papers have been used by converting into agreement to sell.

From the pleadings of parties, the following issues were framed by the trial Court:

- “1. Whether the defendant executed agreement to sell dated 18.12.2008 confirmed by subsequent writing dated 05.02.2010 in favour of the plaintiff?OPP*
- 2. Whether the plaintiff is entitled to relief of specific performance of the agreement in question?OPP*
- 3. Whether the plaintiff is ready and willing to perform his part of contract?OPP*
- 4. Whether the plaintiff is entitled for consequential relief of permanent injunction as prayed for?OPP*

5. *Whether the plaintiff is entitled to alternative relief of recovery as prayed for?OPP*
6. *Whether the suit of the plaintiff is not maintainable in the present form?OPD*
7. *Relief.”*

In order to prove their case, respondent-plaintiff examined himself as PW1, who tendered his duly sworn affidavit Ex.PW1/A along with agreement Ex.P1, writing dated 05.2.2010 Ex.P2, copy of notice Ex.P3, postal receipt Ex.P4, PW2-Baj Singh, PW3-Harjinder Singh, attesting witnesses and PW4-A.S Virk, Notary Public.

On the other hand, defendant examined himself as DW1 and tendered into evidence his duly sworn affidavit Ex.DW1/A.

On the basis of preponderance of evidence, the trial court decreed the suit and granted discretionary relief and the Appellate Court affirmed the findings in appeal.

Learned counsel for the appellant submitted that the findings recorded by both the courts below in decreeing the suit are patently illegal and the same are liable to be set aside. The findings recorded by both the courts below are not sustainable in law, for no agreement to sell was entered into since it was only a loan transaction. The plaintiff did not discharge his onus of proving the said agreement to sell despite examining two attesting witnesses, for, the Stamp vendor has not been examined to establish whether stamp papers were purchased for loan transaction or agreement to sell. Readiness and willingness of the plaintiff has also not been proved on record and all these aspects have been totally brushed aside by both the courts below, thus he prayed for allowing the appeal.

Upon issuance of notice of motion by this Court on 04.04.2016,

there is no representation on behalf of the respondent-plaintiff as noticed vide order dated 20.1.2017.

After hearing learned counsel for the appellant and appraising the paper book, I find no force and merit in the submissions of learned counsel for the appellant. Once the appellant-defendant had denied the execution of the agreement, he cannot be permitted to take up the plea of readiness and willingness.

Be that as it may, plaintiff-respondent in para 5 of the plaint categorically pleaded as under:

“5. That the plaintiff is and has always been ready and willing to perform his part of contract and to get the sale deed executed and registered from the defendant as per the terms and conditions of the agreement of sale dated 18.12.2008, confirmed by subsequent writing dated 05.02.2010. On the stipulated date i.e 30.4.2010, the plaintiff again approached the defendant in his house with the balance sale consideration and requested him to receive the balance sale consideration and to execute a registered sale deed in his favour, but the defendant again postponed the matter on the ground that he has some urgent work and will execute a registered sale deed on some other day. After that also, the plaintiff requested the defendant to execute a registered sale deed in his favour a number of times only to avoid litigation but the defendant postponed the matter by one way or the other.”

In response to the said averments, defendant-appellant in the written statement replied as under::

“5. Para No.5 of plaint is wrong and denied. The question of ready and willingness does not arise when

*the defendant never executed the alleged agreement.
The story given in this para of plaint is concocted one.
Full facts are given above which may be read here.”*

From the perusal of the contents of the written statement, it is apparent that the stand of the defendant-appellant had been totally vague, for, there was no emphatic denial. Statement of both the marginal attesting witnesses has not been shattered despite extensive cross examination much less payment of earnest money and execution of the agreement to sell had been proved to the hilt. If at all the defendant-appellant had obtained loan, nothing prevented him to lead evidence and plead in written statement.

No plausible explanation has come forth as to under what circumstances, the blank papers were used once there is categoric admission of the signatures on the document but the purpose was denied. Thus no fault or infirmity could be found with the judgment and decrees passed by both the courts below.

As a sequel to the aforesaid discussion, the findings of the lower Appellate Court cannot be said to be suffering from illegality warranting any interference by this Court. No other relevant document has been placed on record enabling this Court to form a different opinion than the one adopted by both the courts below.

Dismissed.

May 22, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No