

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.3221 of 2016

Date of Decision : 24.05.2018

Sewa Singh

.....Appellant

Versus

Ram Lubhaya

..... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Manoj Sharma, Advocate for
Mr. Ritesh Panday, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the respondent/plaintiff was decreed by the trial Court vide judgment and decree dated 5.8.2013. As even the appeal preferred against the said decree failed and was dismissed on 15.11.2014, the appellant/defendant is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a decree for specific performance of the agreement dated 20.06.2006, executed by defendant in his favour as regards the land measuring 7 kanals 15 marlas situated in the revenue estate of village Aluna Tehsil and District Gurdaspur. In the alternative a decree for recovery of Rs.7,00,000/- was also prayed for. In brief, the case set out by the plaintiff was that in terms of the agreement the sale consideration was fixed as Rs.7,00,000/-. A sum of Rs. 6,18,600/- were paid by the plaintiff to the respondent by way of earnest money at the

time of execution of the agreement. The balance sale consideration was to be paid on 20.06.2007, at the time of execution and registration of the sale deed. Parties with mutual consent had extended the said date up to 20.08.2007, but as the defendant failed to perform his part of contract, thus, the suit.

In the written statement filed on behalf of the defendant it was pleaded that no such agreement was ever executed by the defendant. Likewise, there was no occasion for the defendant to have received a sum of Rs.6,18,600/- by way of earnest money. In fact, plaintiff happens to be the commission agent and money lender and would advance loan to people on interest @ 3 to 8%. Similarly, the defendant was in dire need of money about 4 years ago and obtained Rs.30,000/- from the plaintiff on interest @ 3% per month.

On a consideration of the matter in issue and the evidence on record both the Courts concurrently concluded that the parties were dealing with each other even in the past. For, they had multiple transactions between them even before the execution of the alleged agreement dated 20.06.2006. Plaintiff had not disclosed that he was a grain broker/merchant which was duly proved on record and admitted even by the witnesses, examined by the plaintiff. Even in the earlier transactions that were entered into between the parties, the agreement to sell was recorded only as security for loan. Nothing was brought on record by the plaintiff to show that the agreement in question was indeed entered into between the parties to alienate the suit land, and not as

security to the loan. None of the witnesses examined by the plaintiff could prove that the agreement dated 20.06.2006, was signed by the parties before them, and after going through the contents thereof. Even passing of the consideration by way of earnest money in their presence was not established. However, for, the defendant had not denied his signatures on the documents, therefore, it could be safely held that the agreement in question was actually a loan transaction. Thus, the plaintiff was not entitled to a decree for specific performance of the agreement, but for an alternate relief for recovery of Rs.7,00,000/- with interest, for, nothing was brought on record to show that this amount was re-paid by the defendant. On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusion arrived at by both the Courts were either contrary to the record or suffered from any material illegality.

No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

24.05.2018

*Manoj Bhutani***(ARUN PALLI)
JUDGE**Whether speaking/reasoned
Whether reportableYes/No
Yes/No