

DIWAKER GULATI
2018.09.18 11:25

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

RSA No.349 of 2016(O&M)

Date of decision: 24.8.2018

Jarnail Singh

....Appellant

VERSUS

Sukhwinder Pal and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. A.S. Bhatti, Advocate for the appellant.

REKHA MITTAL, J.(Oral)

CM No.1096-C of 2016

Heard.

Allowed as prayed for.

Deficiency of Court fee has already been made up.

Disposed of accordingly.

RSA No.349 of 2016

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for specific performance of agreement to sell dated 11.11.2003 in respect of area measuring 1 marla bearing khasra No.15/11/1/1 (0-12) situated in village Nandachaur, detailed in head-note of the plaint was decreed by the trial Court vide judgment and decree dated 31.01.2012 and appeal preferred by unsuccessful defendant/appellant did not find favour with the Additional District Judge, Hoshiarpur whereby findings recorded by the trial Court were affirmed without variance.

Perusal of the judgments passed by the Courts would reveal that the appellant/defendant has not denied execution of agreement of sale dated 11.11.2003 whereby 1 marla out of 12 marlas comprising of the aforesaid khasra number with detailed boundary of the portion agreed to be sold was executed and no date was fixed for execution of the sale deed. As per recital in the agreement, the entire sale consideration of Rs.57,000/- was paid to the vendor and possession of sold area was delivered in favour of the proposed vendee. However, the appellant raised a plea that as a matter of fact, the property was agreed to be sold for a sum of Rs.1,57,000/- but in the agreement, sale consideration has been mentioned as Rs.57,000/- by keeping the appellant in dark, therefore, the respondents are not entitled to specific performance of agreement based upon fraud and misrepresentation.

The sole submission made by counsel for the appellant is that the respondents/plaintiffs have raised the plea that construction of three shops on the area in question has been raised by them but the said plea gets falsified and belied from entry in the Jamabandi for the year 2001-02 that records *gair mumkin* shops in disputed khasra number, thus, plea of the respondents with regard to raising construction of shop(s) gets falsified and belied.

I have heard counsel for the appellant, perused the paper-book particularly the judgments impugned.

Before advertng to the submissions made by counsel for the appellant, it is pertinent to recapitulate that in the Regular Second Appeal, it is not open for the Court to re-appreciate evidence to record a finding different from what has been held by the Courts. Equally settled is that the

Regular Second Appeal can be admitted for hearing if it gives rise to a question of law that needs determination in the second appeal.

In the case at hand, the appellant has not disputed execution of agreement of sale but raised a plea that the property was agreed to be sold for a sum of Rs.1,57,000/- as against Rs.57,000/- incorporated in the agreement and the said recital is the result of fraud/misrepresentation. To substantiate his plea in this regard, there is only self-serving statement of the appellant. Counsel for the appellant has failed to point out any materials elicited in cross examination of witnesses examined by the respondents to prove the agreement. This apart, a plea of fraud is required to be proved akin to a criminal charge. The mere fact that Jamabandi for the year 2001-02 records existence of shops on area measuring 12 marlas is not sufficient to establish plea of the appellant that 1 marla area was agreed to be sold for sale consideration of Rs.1,57,000/- as against Rs.57,000/- recorded in the agreement of sale. In this view of the matter, I do not find an error much less perversity in consistent findings recorded by the Courts, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

AUGUST 24, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no