

In the High Court of Punjab and Haryana at Chandigarh

RSA-311 of 2015(O&M)
Date of Decision:8.2.2018

Surjit

---Petitioner

vs.

Kashmir Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Dinesh Mahajan, Advocate
for the appellant

Rekha Mittal, J.

Challenge in the present appeal has been directed against the judgment and decree dated 29.5.2010 passed by the Civil Judge (Senior Division), Gurdaspur whereby suit filed by the respondent-plaintiff for possession by way of specific performance of agreement dated 20.6.2002 in respect of land measuring 1 kanal was partly decreed by allowing alternative relief of recovery of earnest money i.e. Rs. 66,000/- alongwith interest @ 12% per annum from the date of agreement i.e. 20.6.2002 till realization and findings of the trial court have been affirmed by the Additional District Judge, Gurdaspur.

The sole submission made by counsel for the appellant is that one of the attesting witnesses to the agreement of sale namely Roop Lal PW2 in his cross examination has admitted that there was no transaction of

giving/taking of money in his presence, therefore, plea of the respondent/plaintiff that an amount of Rs. 66,000/- was paid to the appellant at the time of execution of agreement dated 20.6.2002 becomes doubtful.

Before advertng to the submissions made by counsel for the appellant, it is appropriate to recapitulate that the second appeal can be entertained and decided if the same gives rise to a question of law that requires adjudication. Equally settled is that civil disputes are to be decided on the basis of preponderance of probabilities.

In the case at hand, the appellant has denied having executed the agreement of sale with the plea that an amount of Rs. 50,000/- was borrowed by his co-brother from the respondent/plaintiff and a document was prepared by way of security qua repayment of the said amount of Rs. 50,000/- which was later repaid. Meaning thereby that the appellant has not disputed his signatures on the agreement of sale. As the appellant had admitted his signatures on the agreement consisting of three pages, there was heavy onus to be discharged by him to substantiate his plea with regard to transaction of borrowing of Rs. 50,000/- and parties having intended to execute a document by way of security for repayment of the said loan amount.

The appellant appeared in the witness box and reiterated plea in this regard by way of affidavit Ex. DW1/A. In his cross examination, he has denied if there was any transaction with him. Further stated that he has not mentioned of any transaction in his examination in chief. He has even denied his signatures on the agreement Ex. P1. Under the circumstances,

sole testimony of the appellant is not at all sufficient either to rebut evidence adduced by the respondent/plaintiff consisting of testimonies of Tarsem Masih, Deed Writer PW1, Roop Lal one of the attesting witnesses of the agreement PW2, Kashmir Singh respondent/plaintiff PW3. In this view of the matter, a single sentence in cross examination of Roop Lal pointed out by counsel for the appellant does not constitute a substantial question of law, to be decided in the second appeal

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. The judgments and decrees passed by the courts below are affirmed. No order as to costs.

(Rekha Mittal)
Judge

8.2.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No