

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

RSA No.2321 of 2014

Date of decision: 7th February, 2018

Keshwanand Sharma

... Appellant

Versus

Rajinder Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Kapil Khanna, Advocate for the appellant.

Respondent – ex parte.

FATEH DEEP SINGH, J.

In this regular second appeal, the appellant Keshwanand Sharma who was the erstwhile plaintiff, has impugned the judgment and decree dated 07.01.2013 passed by the Court of Civil Judge (Junior Division) Jalandhar dismissing his suit and which finding was upheld by the learned first appellate Court through judgment and decree dated 25.11.2013 dismissing the appeal of the plaintiff/appellant.

Heard Mr. Kapil Khanna, Advocate for the appellant and whereas the lone respondent is ex parte. The brief facts that needs to be brought about are that plaintiff/appellant Keshwanand Sharma in his plaint claimed that he purchased the property, subject matter of dispute, from one Diwan Chand who happens to be attorney of one Gurbaksh Singh Sandhu son of Harbans Singh Sandhu, holding attorney No.164 dated 20.06.1974 and the sale deed was written in the name of wife of the

plaintiff namely Shiksha Sharma on 10.09.1974 and thereafter Shiksha Sharma executed a will on 19.01.2002 in favour of the plaintiff and thus, claimed that the plaintiff has become owner in possession of the property in question. It is further alleged that on account of some financial problem the plaintiff approached one Mahinder Rana for arranging money on interest from defendant Rajinder Singh and as an arrangement the plaintiff gave two signed blank cheques and also signed on the stamp papers of the value of Rs.300/- which were given to the defendant as security. He further claimed that in fact Mahinder Rana received a sum of Rs.5.00 lacs from the defendant and instead gave only Rs.3.50 lacs to the plaintiff after obtaining his signatures on the blank stamp papers and thus, a dispute had arisen whereby the defendant duly armed had threatened the plaintiff to evict him from his property claiming that the defendant on the basis of signatures have prepared a forged and fabricated agreement to sell dated 31.12.2010 and claimed to have purchased the property. It is further alleged that on the basis of such a forged document, a civil suit for specific performance has been filed by the defendant against the present plaintiff/appellant and an ex-parte judgment and decree was obtained from the Court regarding which the plaintiff has filed an application for setting aside the same. It is further alleged that regarding this dispute, an FIR bearing No.117 has been registered at Police Station Division No.7, Jalandhar under Sections 420, 465, 468, 448, 120-B IPC. Besides this, the plaintiff has also filed a suit for declaration that the agreement to sell dated 31.12.2010 is a forged and

fabricated document and has no value in the eyes of law and also a suit for possession of the property in question which has been forcibly taken away by the present defendant/respondent.

In the present case, the defendant has been proceeded against ex-parte and the plaintiff to prove his case examined himself as PW1 and tendered into evidence his affidavit Ex.PW1/A reiterating his allegations and proved on record photostat copy of the sale deed Ex.P1, photostat copy of the agreement to sell Mark-A and Mark-B and copy of the FIR Mark-C, and thereafter examined PW2 Raj Kumar and PW3 Sewa Singh who tendered into evidence their affidavits Ex.PW2/A and Ex.PW3/A respectively supporting case of the plaintiff. It is consequent upon hearing arguments, the trial Court of learned Civil Judge (Junior Division) Jalandhar dismissed the suit and which findings of the learned trial Court were upheld through impugned judgment dated 25.11.2013 of learned Additional District Judge, Jalandhar dismissing the appeal.

It is admitted stand of the two sides that an ex-parte judgment and decree has been passed against the present plaintiff in another suit for specific performance filed by the present defendant. An application for setting aside that ex-parte judgment and decree is pending and thus as on date the ex-parte judgment and decree still holds good and therefore, a second suit on the similar question and facts certainly is not sustainable. The Court below has rightly held that the validity of the disputed agreement has already been decided by the Civil Court of competent jurisdiction and therefore, the present suit does not lie and is not

maintainable in respect of the same agreement as there is a specific bar under Order II, Rules 2 and 3 of the Code of Civil Procedure for filing of a subsequent suit on the same cause of action and issues.

Learned counsel for the appellant could not convince this Court as to how there has been miscarriage of justice by the consistent findings of the two Courts below necessitating intervention by this Court. The legality and validity of the same very agreement has already been resolved by the Court and for which the application for setting aside the ex-parte judgment and decree is pending and which does not give rise to the plaintiff/appellant to challenge the same very agreement through another suit. In the light of the same, finding no merit, the instant appeal stands dismissed.

(FATEH DEEP SINGH)
JUDGE

February 7, 2018

rps

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