

DIWAKER GULATI
2018.09.18 11:25

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

RSA No.881 of 2016(O&M)

Date of decision: 5.9.2018

Jasvir Singh

....Appellant

VERSUS

Gurdial Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Satbir Rathore, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against judgment and decree dated 29.09.2015 passed by the Court in appeal whereby appeal was accepted, judgment and decree dated 24.01.2012 passed by the trial Court have been set aside and suit filed by the respondent/plaintiff for joint possession of land measuring 2 kanal 3 marlas by way of specific performance of agreement to sell dated 13.12.2002 has been partly decreed and the respondent/plaintiff has been allowed alternative relief of recovery of Rs.1,72,500/- with interest at the rate of 12% per annum from the date of agreement till the date of decree and 6% per annum from the date of decree till payment of the decretal amount.

The sole submission made by counsel for the appellant is that the defendant/appellant raised a specific plea that he had taken loan of Rs.1,25,000/- from one Manmohan Singh and agreed to pay interest at the rate of 5% per month for six months but said Manmohan Singh got scribed the alleged agreement by adding Rs.37,500/- as interest in the principal amount which defendant No.1 has not received. The blank stamp papers were got signed by Manmohan Singh as security of loan. Manmohan Singh

also got a cheque of Rs.1,62,000/- from the appellant on 04.04.2005 and promised to return the alleged agreement on the next day but he did not return the same. The appellant stopped payment of the cheque. Manmohan Singh filed a complaint under Section 138 of the Negotiable Instruments Act, 1881. The alleged agreement is outcome of fraud and misrepresentation committed by Manmohan Singh and is not enforceable. It is further argued that the trial Court, on detailed consideration of materials on record, rightly negated plea of the respondent/plaintiff with regard to the appellant having executed agreement to sell dated 13.12.2002 but the Court in appeal committed a serious error rather illegality by reversing findings of the trial Court and accepting that agreement was executed by the appellant. It is further argued that the Court in appeal itself has doubted correctness of the agreement for the reasons recorded in para 20 of the judgment, therefore, findings of the Court in appeal are self-contradictory.

I have heard counsel for the appellant, perused the paper-book particularly the judgments passed by the Courts.

From the defence plea raised by the appellant, it becomes admitted position of the case that the appellant has not denied his signatures on the agreement of sale. Once the appellant has admitted his signatures on the agreement, law imposes an obligation upon the signatory to explain as to the circumstances under which he appended his signatures on the agreement of sale. In the case at hand, the respondent/plaintiff examined Ashok Kumar, Deed Writer PW-2, Darshan Singh PW-3 an attesting witnesses to the extension of time for execution of sale deed from 15.06.2003 to 23.05.2005 and Diwan Chand PW-4 a Lamberdar of village Badhupur, attesting witness to the agreement of sale. The Court in appeal,

in para 18 of the judgment, has noticed that the appellant in his cross examination has candidly admitted that he executed the agreement Ex.P1 on 13.12.2002 in favour of the plaintiff which was scribed by Ashok Kumar, Deed Writer. He has also admitted that he has no animosity with Diwan Chand, Lamberdar, Manmohan Singh, Shingara Singh and Ashok Kumar, Deed Writer. No sooner did the appellant admit execution of agreement Ex.P1, it falsifies and belies his defence plea that his signatures were obtained on blank papers by one Manmohan Singh and the same were later used for preparing agreement of sale.

Counsel for the appellant has not disputed the factual aspects noticed by the Court in appeal, therefore, any such plea raised in defence , noticed hereinbefore, would be of no avail for the appellant to escape his liability to refund earnest money plus a sum of Rs.10000/- received at the time of extension of time. The Court in appeal has not allowed specific performance of the agreement for the reasons recorded in para 20 of the judgment whereby the Court has entertained some doubt if the transaction was intended for sale and purchase of land rather than security for repayment of loan. Under the circumstances, it cannot be held that the judgment passed by the Court in appeal is self-contradictory or liable to be set aside.

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

SEPTEMBER 5, 2018

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no