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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4807-2014 (O&M)
Date of decision : 25.01.2018

Harpal

... Appellant(s)

Versus

Om Parkash and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. V.K. Jindal, Senior Advocate with
Mr. Sushil Jain, Advocate and
Ms. Janya Sirohi, Advocate
for the appellant(s).

Mr. Sunil Garg, Advocate
for the respondent(s).

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AMIT RAWAL, J. (ORAL)

The appellant-defendant is aggrieved of the concurrent findings of fact, whereby the suit seeking specific performance of the agreement to sell dated 25.11.2005, in respect of land measuring 15 kanals 5 marals agreed to be sold @ ₹14,20,000/- per acre against the payment of earnest money of ₹11,30,000/- (₹ 9 Lacs in cash and ₹2,30,000/- by way of cheque bearing No.036006 dated 25.11.2005), has been decreed by both the Courts below in favour of the respondent(s)-plaintiff(s).

Mr. V.K. Jindal, learned Senior Counsel assisted by Mr. Sushil Jain, learned counsel appearing on behalf of the appellant-defendant submits that both the Courts below have abdicated in not referring to the documentary and oral evidence. There was a categoric stand taken in the written statement that a blank paper having the signatures of the defendant had been used by playing a fraud upon him, in fact the plaintiff(s) was mediator of a previous sale transaction i.e. sale deeds dated 08.04.2005 (Ex.D-1 and Ex.D-4) of which and the mutation was entered on 09.11.2005 i.e. few days before the agreement to sell. It was also stated that the amount of ₹2,30,000/- by way of cheque was surreptitiously and fraudulently deposited in the account, but was not aware regarding the source of the money. No doubt the respondent(s)-plaintiff(s) had filed the suit on 05.07.2006 after expiry of the stipulated date i.e. 25.03.2006, but the fact of the matter is that the witness of the agreement to sell PW-4 Dhanraj, in cross-examination had not been able to withstand its wrath and even feigned ignorance about the manner and mode of the execution of the agreement to sell. Non-advertence is a result of misdirection and therefore, perversity. All these facts are required to be taken into consideration. Adverse inference should not be drawn with regard to the retaining of the money of ₹2,30,000/-

He on instructions from his clients submits that he is willing to return the amount along with interest and some more compensation, thus, urges this Court for formulating the substantial questions of law as drawn in the memorandum of appeal.

Per contra, Mr. Sunil Garg, learned counsel appearing on behalf of the respondent(s)-plaintiff(s) submits that the readiness and willingness has been proved to the hilt owing to the fact that within three months of refusal on the part of the appellant-defendant to execute the sale deed, the suit, aforementioned was filed on 05.07.2006. The appellant-defendant has not been able to explain retention of an amount of

₹2,30,000- by way of cheque. If at all, somebody had fraudulently deposited the amount, he could not sit idle and expected to make all possible efforts to ascertain its source and make a complaint by approaching the bank or even to the police. The civil suit was preceded by legal notice dated 25.04.2006 by a registered post, which carried a presumption of truth as per the provisions of Section 27 of the General Clause Act. The evidence, both chief and cross of the attesting witnesses had to be read in conjunction and not in isolation i.e. one word here and there would not shake the credibility of the witness and thus, urges this Court for upholding the concurrent findings as there is no illegality and perversity in the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Jindal, for, it is a conceded position on record that against the payment of ₹11,30,000/- purported to have been given as earnest money to the appellant-defendant, a sum of ₹ 9 Lacs was given in cash and ₹2,30,000/- by way of cheque dated 25.11.2005, which was encashed by the appellant-defendant in his bank account. It was not that the somebody had done a RTGS transfer in the account the appellant, it was a voluntary act of the appellant-defendant, who intentionally deposited the cheque in his account. It is a common practice for the persons to wriggle out of the agreement realizing that during the subsistence of the agreement to sell, the prices of the land sometime increase phenomenally and marginally. The signatures on the agreement have not been denied. In order to prove the ingredients of fraud, the legislature has taken care of the same as per the provisions of Order 6 Rule 4 CPC. No evidence cogent or direct, much less, any corroborative evidence, has been placed on record to establish the so called fraud of misrepresentation. It is a matter of co-incidence that four sale deeds are of dated 08.04.2005 and mutation was entered after few days i.e. on 09.11.2005. Even the purchase of a stamp paper few days before i.e. on 18.11.2005 and by entering the agreement after subsequent date i.e. after 7 days thereof, would not make any difference. All these facts have been taken into consideration by the Courts below.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees rendered by both the Courts below as the same are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination. Accordingly, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

25.01.2018
Yogesh Sharma

✓
Whether speaking/reasoned **Yes/ No**
✓
Whether Reportable **Yes/ No**