

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.4599 of 2017 (O&M)
Date of Decision.30.01.2018

Rashpinder Singh and another

.....Appellants

Vs

Chatar Singh

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jaivir S. Chandail, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

The appellants-defendants are in appeal against the judgment and decree rendered by the lower Appellate Court whereby suit for recovery of amount of ₹5 lacs has been decreed with interest @6% from the date of execution of agreement to sell dated 09.06.2012.

Mr. Jaivir S. Chandail, learned counsel appearing on behalf of the appellants submitted that the respondent-plaintiff instituted a suit claiming recovery of amount of Rs.10 lacs i.e. ₹5 lacs as principal and ₹5 lacs for damages on the basis of agreement to sell dated 09.06.2012 which was executed in respect of land measuring 4 kanals 16 marlas for ₹20,40,000/- per acre, against a payment of ₹5 lacs as earnest money. The stipulated date for execution and registration of the sale deed was 10.07.2012. In pursuance of the aforementioned suit, the appellants-defendants taken a defence that the defendant No.1 had not signed the aforementioned agreement to sell, which was forged and fabricated but did not deny the fact that defendant No.1 was holder of agreement dated 31.10.2011, which he had entered with the vendor for the purchase of land. The trial Court on the basis of preponderance of evidence noticed that the plaintiff failed to produce on record agreement to sell

dated 31.10.2011, which was essential and necessary for adjudication of the suit, hence dismissed the same. The judgment passed by the trial Court was assailed before the lower Appellate Court, which reversed the same and decreed the suit vis-à-vis defendant No.2 also, who is none else but wife of defendant No.1, thus, committed illegality and perversity as she is not signatory of the agreement to sell dated 09.06.2012. A specific objection with regard to non-joinder and mis-joinder of the parties was raised but the lower Appellate Court by taking the aid of Order 1 Rule 9 CPC discarded the argument of the appellants-defendants. Defendant No.2 is an Anganwari Worker and does not have any source to pay the alleged amount, thus, prays for setting aside the judgment and decree rendered by the lower Appellate Court by formulating substantial questions of law as framed in the memorandum of appeal.

I have heard learned counsel for the appellants and appraised the paper book. Concededly, appellant-defendant No.1 is the holder of agreement dated 31.10.2011 in respect of aforementioned land but having failed to perform his part of the agreement with the vendor, entered into another agreement and received ₹5 lacs as earnest money. The plaintiff realizing that he could not seek the specific performance of agreement to sell against the original vendor filed suit simplicitor for recovery. I am of the view that suit for recovery was perfectly maintainable as there was no contract between the plaintiff and the vendor. The plea of forgery by misuse of blank papers has not been proved to the hilt. No expert has been examined to belie the signatures whereas on the contrary, respondent-plaintiff has examined the attesting witness and the notary, who had notarized the agreement to sell. The coherent and consistent evidence has not been controverted. The suit was preceded on a legal notice dated 16.09.2014. If at all, there was some strength in the

argument of the counsel for the appellants, nothing prevented the defendants to reply the same, as the registered notice carries the presumption of truth under Section 27 of the General Clauses Act.

The lower Appellate Court, in my view, being the last court of fact and law has discharged the obligation provided under Section 96 CPC by examining the evidence afresh. Non production of agreement to sell dated 31.10.2011 was not fatal to the suit for recovery in view of the fact that the execution of the agreement to sell and payment thereof had been proved, though claim for damages to the tune of ₹5 lacs had been denied. It is for the decree holder to seek execution of the decree in accordance with law. There would have been some force in the submission of Mr. Chandail as defendant No.2 was not signatory of the agreement to sell but the fact of the matter remains that defendant No.1 and 2 are the husband and wife, therefore, it is their own arrangement to satisfy the decree.

The appeal is also accompanied by an application for permission to prefer the appeal as an indigent person. The application is dismissed for want of court fee.

In view of the aforementioned, I do not find any reason to interfere with the judgment and decree passed by the lower Appellate Court as the same is based upon correct appreciation of fact and law, much less, no substantial question of law arises for consideration. No ground for interference is made out. The second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

January 30, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No