

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

120

RSA-5337-2018 (O&M)
Date of Decision : 25.9.2018

Fateh Singh

....Appellant

vs.

Jasbir Singh

....Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Ashish Soi, Advocate
for the appellant.

AJAY TEWARI, J. (Oral)

CM-14732-C-2018

This is an application for making up deficiency in the Court fee.

Deficiency of Court fee stands made good. Application stands
allowed.

Main Case

This appeal has been filed against the judgment of the
Appellate Court reversing that of the Trial Court and thereby decreeing a
suit of specific performance which was filed by the respondent.

The case set out by the respondent was that the appellant had
entered into an agreement to sell about 59 Kanals and 18 Marlas at the rate
of Rs.12 lakhs per acre by way of agreement to sell dated 11.8.2010. At the
time of entering into agreement to sell he had given a sum of Rs. 35 lakhs as
earnest money. The target date was fixed as 2.6.2011. The respondent

appeared before the Sub-Registrar and got his presence marked but the appellant did not turn up. Legal notice was issued but no reply was filed to it. Consequently, the present suit was instituted.

The case of the appellant on the other hand was that he had never entered into agreement to sell with the respondent. In the notice and in the plaint the respondent had stated that on 2.6.2011 he had purchased stamp papers amounting to Rs. 2,24,625/-. The case of the appellant was that in fact the appellant was addicted to narcotic drugs and the respondent used to supply him. The plea taken was that it is quite possible that the respondent may have obtained his thumb impression when he was under the effect of drugs and thereafter, it may have been converted the same into agreement to sell.

In support of his claim the respondent appeared and testified. He had stated that he was a big landlord owning about 70 Acres and therefore was well in capacity to arrange a sum of Rs. 35 lakhs as well as earnest money. He further stated that that money was lying in his house and that he had got it after selling his crop of wheat and paddy. One attesting witness Zile Singh came and testified in favour of the respondent-plaintiff and other attesting witness, however, appeared as a defence witness and supported the case of the appellant that the respondent had never given any earnest money.

The Trial Court dismissed the suit holding that the respondent had not satisfactorily proved the source or payment of Rs.35 lakhs. The lower Appellate Court however held that once the appellant admitted his thumb impression on the agreement to sell and had taken the plea that

thumb impression had been taken when he was under the influence of drugs, this was a positive fact which he had to be proved but no evidence was led to prove his drug dependence. Moreover, once it was the case of the appellant that in fact the respondent used to supply him drugs then he could have got some evidence (in the form of FIR which the appellant may have got recorded against him) or any other material. Ultimately the lower Appellate Court concluded that in the absence of positive evidence of substance abuse, it would have to be held that the appellant gave his thumb impression on agreement to sell after understanding its contents. Once the lower Appellate Court came to this conclusion it further held that the discrepant testimony of the two attesting witnesses would not tilt the preponderance of probability in favour of the appellant. The lower Appellate Court held that the unchallenged testimony of the respondent about his ownership of 70 Acres of land proved that he had the capacity to buy this 7 ½ acres. The lower Appellate Court held that one witness had testified that the money was duly handed over to the appellant and consequently, reversed the finding and decreed the suit.

Learned Senior Counsel has argued that it is very unlikely that a person would keep Rs.35 lakhs on him and carry it on motorcycle and pay it in cash and rather people would prefer to do such a transaction, especially earnest money, by way of bank documents so that vendor can never deny the payment. He has further argued that though there is no admissible medical evidence yet the appellant had placed on record some documents which were marked which showed that he was suffering from drug dependence. Learned Senior counsel has further argued that in the

plaint as well as in the notice the respondent did not mention that he had purchased the stamp papers on 2.6.2011 but had said so in his evidence.

In my considered opinion, whatever arguments have been raised by the learned counsel are pure questions of fact. The Trial Court took one view and the lower Appellate Court took another view.

In the totality of the circumstances, I am not persuaded to hold that the findings of the lower Appellate Court are either based on no evidence or on such perverse misreading of the evidence so as to justify the interference of this Court in second appeal.

The appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

25.9.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No