

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-556-2018 (O&M)
Date of decision : 22.5.2018

Pritpal Singh (deceased) through LRsAppellants.
Versus
Hans Raj and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Narender Pal Bhardwaj, Advocate for the appellants.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

CM-1356-C-2018

Exemption is allowed as prayed for.

CM-1354-C-2018

For the reasons mentioned in the application, delay of 248 days in re-filing the appeal is condoned.

CM-1355-C-2018

For the reasons mentioned in the application, delay of 17 days in filing the appeal is condoned.

CM-1353-C-2018

As the deficiency of the Court fee has been made good, therefore, the present application stands allowed.

RSA-556-2018

Impugned in the present regular second appeal is the order dated 6.10.2016 passed by learned Additional District Judge III, Fazilka affirming the judgment and decree dated 19.3.2013 passed by learned Additional Civil Judge (Senior Division), Jalalabad (West) vide which suit filed by the plaintiff for possession by way of specific performance of the agreement dated 4.7.2005 was decreed. It was ordered that plaintiff shall offer the balance sale consideration, if any, to the defendant within a period of 45 days from the date of decree and thereafter defendant shall execute and get the sale deed registered in favour of plaintiff within a period of 30 days from the date of said order failing which plaintiff shall be at liberty to get the sale deed executed and registered through the process of Court of law. Further, Hardial Singh and Sukhwinder Singh who are subsequent transferee were also directed to join defendant in executing and registering the sale deed in favour of plaintiff. Hardayal Singh and Sukhwinder Singh both sons of Pritpal Singh-defendant were perpetually restrained from alienating the suit property in any manner, or parting with the possession in favour of any other person except the plaintiff.

The short facts of the case which are required to be noticed for the purpose of disposal of the present appeal are that defendant-Pritpal Singh agreed to sell his land measuring 32 kanals in favour of plaintiff. The intention was to sell the whole land measuring 32 kanals, therefore, agreement was required to be rectified by adding Rectangle No. 10 Killa Nos. 11/2/2(2-7) and 22 (8-0). It was further claimed that total land

measuring 67 kanals 12 marlas out of which defendant had already sold land measuring 5 kanals 11 marlas comprised in Rectangle No. 11, Killa No. 14/1. Therefore, plaintiff is not claiming any relief regarding 5 kanals 11 marlas. The agreement was entered on 4.7.2005 @ Rs. 2.00 lacs per acre. The defendant received Rs. 7.00 lacs towards earnest money from the plaintiff and agreed to execute the sale deed on or before 13.10.2005 after receiving balance sale consideration. However, on the said date, defendant did not turn up to execute the sale deed even though presence of the plaintiff is marked by moving an application before the Sub -Registrar, Jalalabad.

On the other hand, defendant took the stand that the agreement is forged and fabricated and he never received any earnest money from the plaintiff. In fact, plaintiff had a dispute with Des Raj and Gurmukh Singh, who played fraud upon him. Defendant is in relations of said Des Raj and Gurmukh Singh and the said Gurmukh Singh brought the plaintiff to the Tehsil Complex on the pretext that there is some mistake in the sale deeds executed by him in their favour which is required to be rectified by way of supplementary sale deed. His signatures were obtained on blank documents on the pretext of execution of supplementary sale deed. Defendant along with his brother and sister had sold the land measuring 33 acres to Des Raj in the month of June 2005 and a sum of Rs. 1,70,00,000/- is still due and outstanding against Des Raj and Gurmukh Singh.

From the pleadings following issues were framed: -

1. Whether the defendant entered into an agreement to sell the suit schedule property to the plaintiff and received Rs. 7,00,000/- as earnest money? OPP.

2. Whether the plaintiff remained ready and willing to perform his part of the contract? OPP.
3. Whether the suit is not maintainable? OPD.
4. Whether the agreement is a forged and fabricated document and result of fraud? OPD.
5. Relief.

Heard.

A perusal of the judgment of both the Courts below show that in order to prove the agreement, plaintiff examined both the attesting witnesses namely Joginder Singh- MC and Kapil Dev. Both of them proved that agreement was executed in their presence and that defendant received Rs. 7.00 lacs as earnest money and signed the same. Plaintiff himself appeared in the Court in his case and Jagdish Kumar-Reader to the Tehsildar, Jalalabad proved that on the date fixed plaintiff had come present for execution of the sale deed whereas it is not claimed by defendant that he came present. Defendant himself did not enter into the witness box and rather produced his power of attorney and his son Sukhwinder Singh who has supported the case of the defendant.

The trial Court discarded the statement of the said Sukhwinder Singh on the ground that his statement is merely of that of a witness. A adverse view was taken on non appearance of defendant.

Learned counsel for the appellants has argued that statement of power of attorney is as good as that of the party himself. Reliance is placed upon authority of Hon'ble Supreme Court delivered in **Pramod Buildings and Developers (P) Ltd versus Shanta Chopra, 2011 AIR SC (Civil) 741.**

I am of the view that in the present case, defendant had alleged that a fraud was committed upon him. He was brought to the Tehsil Complex by Des Raj and Gurmukh Singh on the pretext of execution of supplementary sale deed and his signatures were obtained on blank stamp papers. He did not received any earnest money. Therefore, these facts were within the personal knowledge of the defendant. Sukhwinder Singh-power of attorney was not present at that time. Therefore, the statement of Sukhwinder Singh cannot be relied upon to prove the said fraud and non receipt of sale consideration.

Both the Courts below have recorded the concurrent findings of fact that the agreement was executed and the sale consideration was paid. In the second appeal, this Court is not to interfere in the concurrent findings of the facts.

In view of above, there is no ground to interfere in the impugned judgment dated dated 6.10.2016 passed by learned Additional District Judge, Fazilka affirming the judgment and decree dated 19.3.2013 passed by learned Additional Civil Judge (Senior Division), Jalalabad (West) is made out.

Dismissed.

Since the main petition is dismissed, the miscellaneous application pending, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

22.5.2018
preeti

Whether speaking / reasoned
Whether Reportable:

Yes/No
Yes/No