

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-2021-2019 (O&M)

Date of decision: 23.07.2019

Balvir Singh (now deceased) through his LR

..... Appellant

Versus

Kartar Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Padamkant Dwivedi, Advocate for the appellant.

RAMENDRA JAIN, J. (ORAL)

Avtar Singh-legal heir of appellant-defendant-Balvir Singh, has approached this Court, through this regular second appeal against judgment and decree dated 18.07.2018, dismissing his appeal, thereby affirming judgment and decree of the trial Court dated 28.02.2017, whereby suit of respondent No. 1-Kartar Singh, for specific performance of agreement to sell dated 12.01.2017 executed by his deceased-father-Balvir Singh was decreed, qua land measuring 29 kanals situated at village Tahli Wala, Tehsil and District Ferozepur, detailed in the judgment of the trial Court.

Briefly, vendor-Balvir Singh, father of the appellant entered into an agreement dated 12.01.2007, to sell his land measuring 29 kanals @ ₹3,25,000/- per acre and received ₹4,00,000/- as earnest money, on the date of execution of said agreement to sell in the presence of witnesses,

namely; PW-2 Darbara Singh and PW-3 Jagtar Singh (at some places in the judgment of the trial Court, both the witnesses have wrongly been shown as PW-3). The agreed date for registration of sale deed was 15.05.2007 which was further extended, after receipt of same part sale consideration of ₹3,00,000/- to 05.02.2008, on which date respondent No. 1-plaintiff came present in the office of Sub Registrar, but vendor-Balvir Singh (deceased) did not turn up. Consequently, vendor-Balvir Singh, failed to perform his part of contract. With these broad submissions, respondent No. 1-plaintiff filed a suit for specific performance of agreement to sell against vendor-Balvir Singh.

Upon notice, vendor-Balvir Singh, was reported to have expired. Therefore, his legal heirs were brought on record, who contested the suit tooth and nail. After holding trial, suit of respondent No. 1-plaintiff was decreed vide judgment and decree dated 28.02.2017.

Being aggrieved, only single legal heir of vendor-Balvir Singh, namely; Avtar Singh approached the Ist Appellate Court, but remained un-successful as his appeal was dismissed, vide impugned judgment and decree dated 18.07.2018.

Learned counsel for the appellant *inter alia* contends that both the Courts below have failed to appreciate that agreement to sell in question allegedly executed by his deceased father was the result of fraud and misrepresentation. It was not executed by vendor-Balvir Singh. To prove the said fact, appellant had moved an application before the Ist Appellate Court, to examine some expert to show that agreement to sell in question was not thumb marked by his deceased father, but, the

Appellate Court dismissed the main appeal, without deciding the said application, which caused great prejudice to the appellant. The prevailing rate of the suit land at the relevant time was ₹7,00,000/- per acre, contrary to the amount i.e. ₹3,25,000/- fictitiously shown in the agreement to sell in question.

Having given thoughtful consideration to the submissions of learned counsel for the appellant, this Court finds the instant second appeal completely devoid of any merit for the reasons to follow:

No question of law much less substantial has been raised in this regular second appeal. Hence, the same is held not maintainable.

By this time, it is settled proposition of law that in civil cases also, allegations of forgery, fraud and misrepresentation are to be proved like a criminal charge. In the instant case, the appellant has not been able to prove any such allegation by leading any evidence, what to talk of cogent or convincing.

It is pertinent to mention here that respondent No. 1 had examined PW-4 Mohinder Singh, Document Writer, who by producing his register categorically testified that at the time of execution of agreement to sell in question, vendor-Balvir Singh, had thumb marked in his register. No suggestion was put to this witness by the appellant that the alleged thumb impression of vendor-Balvir Singh was forged and fabricated, meaning thereby, the appellant admitted the affixation of thumb impression by his deceased father-Balvir Singh in the register of the document writer. Both the marginal witnesses, namely; PW-2 Jagtar Singh and PW-3 Darbara Singh, coupled with the statement of respondent

No. 1-plaintiff, proved due execution of agreement to sell in question by vendor-Balvir Singh in favour of plaintiff. No contrary evidence was led by the legal heirs of vendor-Balvir Singh to rebut their statements.

It is settled proposition of law that in case, any application for leading additional evidence is moved at the appellate stage, the same has to be decided with the main appeal, without passing any *interlocutory* order. Dismissal of appeal of the appellant on merit by the Ist Appellate Court, without deciding his application for leading additional evidence, in itself amounts to dismissal of said application.

More so, judgment of Ist Appellate Court dated 18.07.2018, it has specifically been observed that application of the appellant, if any, also dismissed. The above observation of the Ist Appellate Court, clarifies that application of the appellant for additional evidence was found meritless.

I have carefully gone through the judgments of both the Courts below and find no illegality or perversity in the same. Rather the same are based on correct appreciation of evidence.

The instant regular second appeal, being meritless, is dismissed.

July 23, 2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No