

RSA No.2312 of 2019 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.2312 of 2019 (O&M)

Date of decision: 18.12.2019

Dhola Mahi

.....Appellant

versus

Hans Raj and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Harchand Singh Batth, Advocate, for the appellant.

RAMENDRA JAIN, J. (ORAL)

CM-16174-C of 2019

Through this application under Section 151 CPC permission has been sought to place on record true typed copy of notification dated 03.08.2009 as Annexure A-5 and exemption from filing the certified copy of the same.

Heard.

For the reasons mentioned in the application, same is allowed. True typed copy of notification dated 03.08.2009 is taken on record as Annexure A-5, subject to all just exceptions. The applicant-appellant is exempted from filing certified copy of the same.

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Through this Regular Second Appeal, only defendant No.1 has assailed judgment and decree of the appellate Court dated 11.01.2019, dismissing his appeal against the judgment and decree of the trial Court dated 12.10.2015 in favour of respondent No.1-plaintiff.

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Briefly, respondent No.1 filed a suit against the appellant and proforma respondent No.2 for possession by way of specific performance on the basis of agreement to sell dated 01.06.2010 executed by appellant, agreeing to sell his land measuring 40 kanals 3 marlas, situated at Village Dona Raja Dina Nath, Tehsil Jalalabad, now Guruhar Sahai, District Ferozepur, fully detailed in the judgment of the trial Court, after receiving earnest money of ₹8,09,375/-.

Trial Court after due notice to the appellant and proforma respondent (who did not choose to contest the suit and got himself proceeded ex parte), holding trial, decreed the suit in toto vide judgment and decree dated 12.10.2015.

Being aggrieved, appellant approached the lower appellate Court, who also non-suited him dismissing his appeal vide judgment and decree dated 11.01.2019.

Learned counsel for the appellant *inter alia* contends that both the Courts below failed to appreciate that alleged agreement to sell (Ex.P-7) was inadmissible in evidence for non-payment of requisite stamp duty in view of notification dated 03.08.2009 (Annexure A-5) of the Punjab Government, whereby agreement to sell could only be executed on a stamp paper of Rs.2,000/-, whereas in the instant case, impugned agreement to sell was written on a stamp paper of Rs.500/- only. As per recital in the aforesaid agreement (Ex.P-7), possession of the suit land was allegedly delivered to respondent No.1. Therefore, entire stamp duty was to be paid at the time of execution of this agreement. Both the Courts below failed to appreciate that readiness and willingness of respondent No.1 was also not proved inasmuch as stipulated date for execution of sale deed was

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30.11.2010, on which date respondent No.1 did not come present before the concerned Sub-Registrar with balance sale consideration, rather got marked his presence on the next date i.e. 01.12.2010. In support of his contentions, learned counsel relied upon *Avinash Kumar Chauhan v. Vijay Krishna Mishra*, 2009(1) R.C.R.(Civil) 615 (S.C.), *Omprakash v. Laxminarayan and others*, 2013(4) R.C.R.(Civil) 747 (S.C.) and *Dalip Singh v. Ram Chander*, RSA No.1869 of 2013 decided on 20.02.2015 (P&H).

Having given thoughtful consideration to the above submissions, this Court finds instant appeal completely devoid of any merit for the reasons to follow.

Appellant, being vendor, had himself purchased the stamp papers on which agreement to sell (Ex.P-7) was written. Thus, respondent No.1-plaintiff cannot be blamed for it. That apart, at the time of exhibition of agreement in question as Ex.P-7, appellant did not raise any objection to its exhibition. Meaning thereby, appellant himself permitted the exhibition of agreement in question. Even otherwise, infirmity pointed out about the execution of agreement to sell on an insufficient stamp paper, relates to insignificant aspect of the case. Thus, on the basis of such an infirmity, entire genuine transaction cannot be termed as invalid.

On receipt of notice of the suit, appellant straightaway came with the plea that agreement to sell in question (Ex.P-7) was a forged and fabricated document, but he miserably failed to prove so before both the Courts below. Thus, any plea to wriggle out from the said agreement, has to be rejected and turned down inasmuch as on technical ground, the appellant cannot be permitted to become dishonest and usurp the handsome amount received by him from respondent No.1 as earnest money for sale of his land.

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Perusal of impugned judgment shows that respondent-plaintiff also claimed relief of permanent injunction. Had the respondent No.1-plaintiff been delivered possession of the suit property at the time of execution of agreement to sell in question (Ex.P-7) as per recital therein, in that eventuality, respondent No.1 could not have sought the said relief. Even otherwise, said recital qua delivery of possession to respondent No.1 has gone uncorroborated for the reason that no roznamcha in the revenue record in this regard was got entered by the appellant, which shows that possession was still with the appellant. Therefore, no stamp duty, as had been held in the above referred authorities relied upon by learned counsel for the appellant, was liable to be paid by the respondent-plaintiff.

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

Facts and circumstances of the authorities referred to above by learned counsel are not identical to the facts of the present case. Therefore, no benefit of the same can be given to the appellant.

No other point has been raised or arises for consideration in this appeal.

Dismissed.

(Ramendra Jain)
Judge

December 18, 2019
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No