

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4458 of 2016 (O&M)

Date of Decision: March 28, 2019

Sher Singh

...Appellant

Versus

Manpreet Singh

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. K.B.Raheja, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

The present Regular Second Appeal is directed against the concurrent findings of fact, whereby the appellant-defendant had not been successful in defending the suit for specific performance of the agreement to sell dated 05.07.2006.

Plaintiff instituted the suit alleging that the defendant executed an agreement to sell dated 05.07.2006 to sell the suit property for a total sale consideration of ₹ 25,92,000/- against receipt of ₹ 3,00,000/- as earnest money and the stipulated date for execution of the sale deed was fixed as 31.01.2007. On repeated requests, the defendant did not perform the agreement and had been putting off the matter, thus, constrained to file the suit on 12.08.2009.

Defendant opposed the suit and denied to have entered into an agreement, much less readiness and willingness. It was stated to be a loan transaction.

Plaintiff, in support of the pleadings, himself appeared as PW-3

and also examined PW-1 Karam Singh, PW-2 Balwant Singh, PW-4 Des Raj Singh Deputy Manager SBOP, whereas the defendant examined twelve witnesses.

Mr. K.B.Raheja, learned counsel for the appellant-defendant submitted that the plaintiff miserably failed to prove the intention of the parties of having entered into an agreement. In fact, it was a loan transaction, therefore, there was no question to appear before the Sub Registrar on 31.01.2007. The readiness and willingness, if at all the argument is to be accepted, was conspicuously absent. The suit was filed on 12.08.2009. In support of the aforementioned submission, relied upon the following case law:-

- “1. Narinder Singh Versus Assa Singh, 2010(2) PLR 805;
2. Tejram Versus Patirambhau, 1997(9) SCC 634;
3. Richhpal Singh Versus Sandhura Singh, 2014(9) R.C.R. (Civil) 70;
4. Lalithambika Versus M.O.Varghese, 2005(1) R.C.R. (Civil) 604;
5. Bal Krishna & Anr. Versus Bhagwan Dass (Dead) & Ors., 2008(2) R.C.R. (Civil) 732;
6. Lonkaran Kishorilal Paliwal Versus Bhaskar Rambhau Ghive and another, 1993 CivCC 514;
7. Chodi Mahalakshmi Versus Koppada Sathiraju and others, 2011(8) R.C.R. (Civil) 1796; and
8. Ram Chandra Singh Versus Savitri Devi & others, 2003 (8) SCC 319.

An attempt was made to rely upon Annexures A1 and A2 sought to be placed on record by way of additional evidence before this Court, which was rejected by the Lower Appellate Court.

I am afraid, the aforementioned arguments would not be available to the appellant-defendant, for, on going through the averments in

Paras 7, 8 and 9 of the plaint and as well as reply in the written statement, which are reproduced herein below, the appellant-defendant had not denied specific averments and in the absence of the same, the averments in the plaint as per the provisions of Order 8 Rule 5 CPC are deemed to have been admitted, thus, the argument qua readiness and willingness is not able to cut ice to bring the case within the realm of perversity:-

"Paras 7, 8 and 9 of the plaint

7. *That thereafter, the plaintiff many times requested the defendant to get the sale deed executed and registered in favour of the plaintiff after receiving the balance sale price, as per terms and conditions of agreement to sell dated 5-7-2006 but the defendant put the matter on one excuse or the other and a few days back the defendant totally refused to admit the claim of the plaintiff.*

8. *That the plaintiff always remained ready and willing and is still ready and willing to perform his part of the contract of agreement to sell dated 5-7-2006, whereas the breach of the contract is by the defendant.*

9. *That the plaintiff has also remained in possession of financial resources for the purchase of stamp papers, other expenses for execution and registration of sale deed and balance sale price of the suit property for the payment of the same to the defendant.*

Paras 7, 8 and 9 of the written statement

7. *That para No.7 of the plaint is wrong and hence denied. On the other hand the deft.had been making request to the plaintiff time and again to accept the loan amount, but to no effect.*

8. *That para 8 of the plaint is wrong and denied. It is totally incorrect that the deft.has made any breach of the contract. Rather the plaintiff wants to get undue benefit of the execution of the agreement which is as security.*

9. *That para 9 of the plaint is wrong and denied."*

The appellant-defendant has not been able to belie his signatures and the circumstance under which the same appeared on the agreement to sell. Despite extensive cross-examination, nothing contrary surfaced. No sane person would sit idle in case actually he had not entered into an agreement to sell.

For the reasons aforementioned, no ground for interference in the concurrent findings of fact is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

March 28, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No