

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

RSA No.4961 of 2018 (O&M)

Date of decision: 02.04.2019

Pritam Singh

... Appellant

Versus

Baldev Raj and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sukhjit Singh, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against the judgments and decrees passed by the Courts whereby suit for recovery filed by the plaintiff/appellant was partly decreed being compromised by the trial Court and appeal preferred by the appellant did not find favour with the Additional District Judge, Ludhiana.

The appellant/plaintiff filed suit for recovery of Rs.3,13,836/- i.e. Rs.1,50,000/- as mortgage amount paid to respondents/defendants under mortgage deed dated 19.03.2010 and interest thereon.

The suit was contested by the defendants/respondents who raised averments noticed precisely in para 2 of the judgment of trial Court.

The pleadings led to framing of issues reproduced in para 3 of the judgment of trial Court. However, later when the case was fixed for cross examination of Sampuran Singh, the case was adjourned to

31.05.2016 for payment but on that day appellant did not appear while respondents remained present in the Court alongwith settled amount. The case was again adjourned to 01.07.2016 for payment but again the appellant did not appear in the Court but counsel for the respondents/defendants produced challan in regard to deposit of Rs.3.5 lakhs in treasury and accordingly the trial Court decreed the suit being compromised and suit property as detailed in headnote of the plaint was ordered to be redeemed.

The appeal preferred by the appellant came to be dismissed by the Additional District Judge, Ludhiana on 10.07.2018.

The sole submission made by counsel for the appellant is that in his statement recorded on 12.05.2016, the last two lines of his statement were not read over to the appellant and he was kept in dark, therefore, statement dated 12.05.2016 cannot form the basis of compromise decree. In addition, it is argued that on 31.05.2016, the appellant tried to file an application narrating his tale of woe but the same was not entertained by the trial Court and eventually the trial Court decreed the suit only qua sum of Rs.3.5 lakhs. It is further argued that had the last two lines of his statement dated 12.05.2016 been read over to the appellant by his counsel, the appellant would never had compromised the matter with the respondents/defendants, therefore, the decree passed by the trial Court and affirmed in appeal is liable to be set aside.

I have heard counsel for the appellant, perused the paper book

particularly the grounds of appeal, judgment dated 01.07.2016 passed by the trial Court and dated 10.07.2018 of the appellate Court.

On due consideration of the averments raised in the grounds of appeal before this Court, as per plea of the appellant, he came to know about alleged error in his statement recorded on 12.05.2016, on or before 31.05.2016 as question of filing an application on 31.05.2016 before the trial Court in this regard could arise only in that eventuality. The contention of the appellant is that application dated 31.05.2016 was not entertained by the trial Court though the case was adjourned to 01.07.2016. There is nothing on record suggestive of the fact as to what steps were taken by the appellant to express his grievance against failure of the trial Court to entertain his application dated 31.05.2016 despite the fact that the appellant had a serious grievance to express qua his statement recorded on 12.05.2016 and conduct of his counsel for his failure to read over the whole statement to him.

As per the undisputed position in law, proceedings of the Court are attached sanctity unless a litigant is able to prove that the same are not recorded as per actual proceedings or allegations are levelled against the presiding officer that get substantiated from materials on record. In the instant case, silence on the part of appellant to raise an issue against entertaining his application on 31.05.2016 by the trial Court goes a long way to show that the appellant has raised an incorrect plea with an intent to achieve some ulterior motive, may be, to wriggle out of the settlement. This

apart, a statement recorded in the Court is to be read over to its maker by the Court and not by a counsel. Furthermore, if such an unfounded plea of a litigant is accepted, it may become difficult to vouch for correctness of court proceedings and a party or witness may change his stance on mere asking. In this view of the matter, the appellate Court has rightly refused to accept contention of the appellant that decree passed on the basis of compromise i.e. statements of the parties recorded in open Court suffer from an error much less illegality, warranting intervention.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

02.04.2019
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No