IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.607 of 2017 (O&M)
Date of Decision.13.02.2019

Rajesh Kumar ...Appellant

Vs

Gulshan Kumar and another ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Parminder Singh, Advocate for
Mr. Vinod Kumar, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.1308-C of 2017

For the reasons stated in the application, delay of 15 days in filing of the appeal is condoned.

Application is allowed.

RSA No.607 of 2017

The appellant-defendant has not been successful in defending the alternative relief granted by the trial Court in suit preferred by the plaintiff claiming specific performance of agreement to sell dated 17.05.2006 in respect of land measuring 2 kanals 6 marlas.

The plaintiff sought the aforementioned relief on the ground that the defendant had agreed to sell the aforementioned land for total sale consideration of ₹1,80,000/- and had received ₹1,60,000/- in the presence of two marginal witnesses but did not come forward for execution and registration of the sale deed on the stipulated date i.e. 17.11.2006, thus, filed suit on 15.03.2007.

Defendants denied that there was any intention to sell or purchase the land. It was a loan transaction and had obtained a loan of ₹20,000/- from the plaintiff and for security purpose, plaintiff had obtained signatures of defendant No.1 on blank papers, which has been usurped and used for agreement to sell. In fact, the property was already mortgaged with defendant No.2 bank.

Plaintiff in respect of the aforementioned evidence, examined himself and another witness Jarnail Singh as PW2 whereas defendant No.1 examined himself and one Surender Kumar as DW2.

Learned counsel appearing on behalf of the appellant submitted that cross-examination of the plaintiff revealed that he did not have capacity to pay sum of ₹1,60,000/-. The agreement to sell did not have a separate receipt. No bank statement placed on record to establish that aforementioned amount of ₹1,60,000/- was withdrawn. All these factors lead to irresistible conclusion that the loan transaction was even less than the amount referred to in the aforementioned agreement to sell.

I am afraid aforementioned argument of learned counsel for the appellant is not sustainable, as the appellant-defendant has not been able to deny his signatures. It cannot be assumed that he appended his signatures on blank papers, as on examination of the agreement to sell, the margin between the lines seems symmetrical and there is no variation for adjustment. Even the agreement itself recites of ₹1,60,000/-. In such circumstances, assistance of handwriting expert would have been taken but would not be of any help, in view of admission of signatures. Even if at all, the appellant had taken loan of ₹20,000/-, he ought to have placed on record receipt of repayment of interest etc. No such evidence oral or documentary placed on record to establish the same.

In such circumstances, courts below had no occasion but to decree the suit by granting alternative relief. I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 13, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No