

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.15 of 2018 (O&M)
Date of Decision : 16.10.2019

Sona Singh (now deceased) through his LRs

.....Appellant

Versus

Pawan Kumar

..... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.M.S.Dua, Advocate for
Mr. Parvez Chugh, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the respondent-plaintiff was decreed by the trial Court vide judgment and decree dated 28.08.2015, and as even the appeal preferred against the said decree failed and was dismissed on 27.04.2017. The defendant is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

In brief, the case set out by the plaintiff was that defendant happened to be exclusive owner of a land measuring 16 kanals situated at village Issa Panj Grain, Tehsil Guruhar Sahai, District Ferozepur. He executed an agreement to sell dated 2.11.2009, qua the suit property in favour of the plaintiff for a sale consideration of Rs.20,00,000/-. Rs. 10,00,000/- were paid as earnest money and the date fixed for execution and registration of the sale deed was 02.05.2010. Plaintiff has always been ready and willing to perform his part of contract and as the defendant did not execute the sale deed, in terms of the agreement, thus the suit.

In the written statement filed by the defendant it was pleaded *inter alia* that some other land of the defendant was mortgaged without possession with the plaintiff. Plaintiff approached the defendant that he was ready to redeem the land and asked the defendant to accompany him to Tehsil office. The defendant being an illiterate person accompanying the plaintiff to Tehsil Complex, Guruhar Sahai and put his thumb impressions on number of papers without knowing the contents thereof. It was only after receipt of the summons he came to know that plaintiff on the basis of forged documents has filed the present suit.

Upon consideration of the matter in issue and the evidence on record both the Courts concurrently concluded that Bagga Singh, Stamp Vendor (PW2), Pawan Kumar plaintiff (PW3), Sukhdev Singh (PW4) and Ashok Sethi, Document Writer (PW5), testified in their deposition that defendant had executed the agreement in question in favour of the plaintiff. Likewise, evidence on record showed that the defendant had even received a sum of Rs.10,00,000/- as earnest money. Apparently, the agreement in question (Ex.P4) bears the thumb impressions of the defendant though his case was that plaintiff happened to be a commission agent and played a fraud upon him by not executing the redemption of mortgage deed and instead fabricated an agreement to sell. Whereas nothing was brought on record to show if the plaintiff was indeed a commission agent. None other than the defendant himself admitted in his statement that he could not say if he even made a complaint against the plaintiff though he was defrauded by him. On the contrary, application dated 04.05.2010 (Ex.P5) moved by the plaintiff before the Joint Sub Registrar, Guruhar Sahai, for getting his

presence marked also showed that he was always ready and willing to perform his part of the contract. Thus, the only and the inevitable conclusion that could be reached: plaintiff was entitled to the decree prayed for.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions recorded by both the Courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

16.10.2019

Manoj Bhutani

(ARUN PALLI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No