

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

RSA No.531 of 2014 (O&M)

Date of decision: 13.01.2020

Pappu Bhatia and another

... Appellants

Versus

Nand Lal

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Harshit Anand, Advocate for the appellants.

Mr. Keshav P. Singh, Advocate for the respondent.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit filed by the appellants/plaintiffs for mandatory injunction directing the respondent/defendant to execute the sale deed in their favour regarding suit land or in the alternative for recovery of Rs.5 lakh on the basis of compromise/agreement dated 28.03.2007 was dismissed by the trial Court vide decree and judgment dated 20.09.2012 that came to be affirmed in appeal by the Additional District Judge, Shaheed Bhagat Singh Nagar

Pappu Bhatia plaintiff No.1 and defendant Nand Lal are the sons of Sh. Ram Nath Bhatia plaintiff No.2. The appellants/plaintiffs staked their claim to the suit property or recovery of Rs.5 lakh on the basis of compromise/agreement dated 28.03.2007. It is averred that there was dispute between plaintiff No.1 and defendant regarding money dealings.

The compromise dated 28.03.2007 was arrived at with intervention of respectables. According to compromise, respondent/defendant agreed to pay Rs.5 lakh to plaintiff No.1 and execute an agreement upto 29.03.2007. The defendant did not make payment so plaintiff No.1 is entitle to get sale deed executed and registered regarding land measuring 8 kanals out of land measuring 34 kanals.

Counsel for the appellants by relying upon the document Ex.P2 namely compromise effected on 28.03.2007 would argue that Courts have committed a serious error rather illegality by rejecting plea of the appellants for enforcement of the said agreement whereby the respondent/defendant agreed to pay Rs.5 lakh upto 29.05.2007 failing which he would execute a sale deed in respect of one killa of land situated in village Ghurka Mand. It is further argued that factual findings recorded by the Courts are the result of misreading of contents of document Ex.P2, therefore, cannot be allowed to sustain.

Counsel representing the respondent/defendant has supported concurrent findings recorded by the Courts with the submission that no interference in second appeal is warranted unless the findings suffer from perversity or raise a question of law. It is further argued that this Court may not interfere in concurrent findings merely because a different view is possible on re-appreciation of evidence.

Pappu Bhatia plaintiff No.1 did not appear in the witness box despite being available in India and in the Court premises without any

tangible explanation. The Courts have rightly held that an adverse inference is liable to be drawn against him for his failure to appear in the witness box to substantiate his plea raised in the plaint. With regard to presence of Pappu Bhatia in the Court, Lal Chand PW3 had clearly stated in cross examination that Pappu Bhatia had come along with them but he is present outside the Court. The matter would have been different had there been a justifiable explanation for his failure to examine himself.

Perusal of document Ex.P2 compromise/agreement does not make reference that respondent/defendant had admitted that he had received any money/loan from Pappu Bhatia and there is outstanding liability towards him. It only says that there were money dealings between the brothers and dispute between them has been compromised. Another recital in the agreement is that on 29.03.2007, the respectable present there would get an agreement of Rs.5 lakh made in Balachaur Court and give it to Sh. Ram Nath Bhatia. Another recital in the agreement is that there would be two months time upto 29.05.2007 for payment of Rs. 5 lakh else Nand Lal would execute a registry of one killa of village Ghurka Mand for consideration of Rs.5 lakh. Nothing has been mentioned in the agreement as to whom payment of Rs.5 lakh would be made by the defendant or in whose favour he would be liable to make the registry of one killa of land. There is nothing on record suggestive of the fact that any agreement dated 29.03.2007 was prepared in terms of the document Ex.P2 which is undated though can be inferred to be prepared on 28.03.2007 as it makes reference

to tomorrow's date being 29.03.2007. The Courts have rightly held that this agreement is quite vague and uncertain, therefore, cannot be enforced through process of the Court by filing a suit for mandatory injunction. Furthermore, this agreement is without consideration and as such, becomes un-executable through process of the Court. Analysed from any angle, I do not find any reason to interfere in consistent findings recorded by the Courts.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

13.01.2020
ashok

(REKHA MITTAL)
JUDGE

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