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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-467-2020 (O&M)

Date of Decision:28.09.2022

Lachhaman Dass

.. Appellant

Vs.

Mehma Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Mohit Garg, Advocate for the appellant.

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Manoj Bajaj, J. (Oral)

The appellant (plaintiff) has filed this regular second appeal to challenge the judgment and decree dated 22.10.2019 passed by Appellate Court in Civil Appeal No.79 of 2016, thereby affirming the judgment and decree dated 28.01.2016 passed in Civil Suit 139 of 2014 by Civil Judge, (Senior Division), Kurukshetra, whereby his suit for possession by way of specific performance of agreement to sell was dismissed.

The facts in brief leading to the appeal are that the plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 24.07.2010 executed by defendant-Mehma Singh in his favour for sale of showroom No.6, bounded as East: main road bus stand to Babain road link road, West: 24 feet wide gali, North: plot No.5 and South: Gali 24 feet wide plot measuring 24 feet X 60 feet, vide jamabandi for the year 2005-06 of mauja Ladwa khewat No.547, khatoni No.604, Rect. No.21, Killa No.05(8K-OM), 06 (6K-18M), Rect. No.22, Killa No.10(7K-14), kittas 3, area 22K-12M and khewat No.591, khatoni No.649, Rect No.22, Killa No.01/02(2K-13), 9(2K-8M), Kitta 2, area 5K-1M total land 27K-13M

whole khewat to the extent of 48.4977 share of land measuring 0K-5M-3 sarsai (160 sq. yard). As per the agreement, the total sale consideration for sale of the property was fixed as Rs.15 lacs and the same was paid to the defendant at the time of execution of the agreement. The parties had further agreed that the sale deed would be executed and registered on or before 27.09.2010, but as on the said date, the defendant did not attend the office of Sub-Registrar, Ladwa for execution of the sale deed, so the plaintiff, who was present there got his presence marked through affidavit dated 27.09.2010. The plaintiff was throughout ready and willing to perform his part of contract, but the defendant failed to keep his word, therefore, the plaintiff sent a legal notice dated 09.10.2012 asking the defendant to get the sale deed registered on 22.10.2012, however, again the defendant did not pay any attention to the request of the plaintiff. Thereafter, the plaintiff again requested the defendant to come on 23.10.2012 for registration of sale deed, who absented again and the plaintiff got his presence marked vide affidavit dated 23.10.2012. On this cause of action, the plaintiff prayed for a decree for possession by way of specific performance of the contract.

The suit was contested by defendant/respondent by filing a written statement, wherein he had taken all the possible objections including the maintainability of suit, concealment of material facts, locus standi, cause of action, estoppel etc. and on merits, denied the execution of the agreement dated 24.07.2010 and pleaded that he never received the sale consideration. He pleaded that one Harvinder Kumar Bhatnagar deals in property business and plaintiff-Lachhman Dass is husband of his aunt (Pushpa), and there were good relations amongst Harvinder Kumar Bhatnagar, defendant and Lachhman Dass, who were having money transactions as well as sale and

purchase of properties. Harvinder Kumar Bhatnagar and plaintiff managed to get signatures of defendant on blank stamp papers given by him just for the purpose of security, and later plaintiff and Harvinder Kumar converted the same into the alleged agreement to sell. In the end, it was prayed that the suit be dismissed.

After completion of pleadings of the parties, the civil Court in all had framed eight issues, and thereafter, the parties adduced their respective evidence and considering the same, the Civil Judge (Sr. Divn.), Kurukshetra vide judgment and decree dated 28.01.2016 dismissed the suit.

Aggrieved against the said judgment and decree dated 28.01.2016, the appellant/plaintiff preferred appeal before the Addl. District Judge, Kurukshetra, and the same was also dismissed by way of impugned judgement and decree dated 22.10.2019. Hence this regular second appeal.

Learned counsel for the appellant has argued that the case of the plaintiff stands proved by way of documentary evidence, as the agreement to sell dated 24.07.2010 (Ex. P-13) signed by the parties establishes the promise made by the defendant to sell the suit property to the plaintiff, who had also received the entire sale consideration at the time of execution of the agreement, but ignoring the said material evidence, the Courts have non-suited the appellant/plaintiff. He submits that the affidavit dated 27.09.2010, legal notice dated 09.10.2012 and the affidavit dated 23.10.2012 collectively prove the readiness and willingness on the part of the plaintiff, and the conduct of defendant, who refused to execute the sale deed, therefore, the findings returned by the trial Court, which have been upheld by the Appellate Court are not sustainable. He submits that Harvinder Kumar Bhatnagar (PW-2) was one of the attesting witness of the

agreement to sell, who deposed before the Court to prove the agreement to sell, however, the Courts have erroneously proceeded to dismiss the suit of the plaintiff. He prays that the impugned judgment and decree warrants interference.

After hearing the learned counsel and considering the material on record, this Court finds that according to the plaintiff, the total sale consideration of Rs.15 lacs was paid by him to the vendor-Mehma Singh and out of it, a sum of Rs.5 lacs was borrowed by him from Munish Kumar s/o Ram Kumar, and another sum of Rs.5 lacs was withdrawn by him from his GPF account. The arrangement of sale consideration as deposed by the plaintiff is at variance with the documentary material on record and this discrepancy is noticed by the trial Court in the impugned judgment. Apart from it, the alleged lender namely, Munish Kumar was not examined as a witness, and further the plaintiff has failed to explain the delay in sending the legal notice much after the target date i.e. 27.09.2010 to the defendant. Admittedly, one of the attesting witness to the agreement to sell dated 24.07.2010, namely, Om Parkash appeared as defendant witness (DW-2) to controvert the stand of the plaintiff and supported the stand of the defendant that the instrument relied upon by the plaintiff is a result of fraud. This witness clarified that plaintiff-Lachhman Dass and Harvinder Kumar Bhatnagar, another witness to the agreement to sell, are closely related, who along with him were engaged in the business of property dealing. This witness denied the execution of agreement to sell and the trial Court after carefully examining the evidence on record declined the claim of the plaintiff.

The Appellate Court has also appreciated the evidence on

record independently and has noticed flaws in the evidence of the stamp vendor, agreement to sell and also considered non-examination of material witness relating to the execution of agreement. A careful reading of both the judgments and decrees passed by the trial Court as well as the Appellate Court leaves no room for any doubt that the Courts have properly appreciated the evidence on record while delivering the findings on material issues against the plaintiff. Since the impugned judgment and decree do not suffer from any perversity, therefore, this Court is not inclined to exercise the jurisdiction under Section 100 CPC, as the appeal does not involve any substantial question of law.

No other argument has been raised.

Resultantly, finding no merit in the appeal, the same is dismissed.

28.09.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No