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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1867-1995 (O&M)
Date of decision : 12.05.2023

Ramesh Kumar ... Appellant(s)

Versus

Waryam Singh (deceased) through LRs ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ankush Bharti, Advocate for
Mr. K.K. Goel, Advocate for the appellant.

Ms. Neha Jain, Advocate for the respondents.

ALKA SARIN, J. (ORAL)

CM-14231-C-2018

This is an application for condonation of delay of 357 days in
filing the application for restoration of the main appeal.

For the reasons stated in the application, the same is allowed
and delay of 357 days in filing the application is condoned.

CM-14232-C-2018

For the reasons stated in the application, the same is allowed
and CM-14894-C-2016 is restored to its original number.

CM-14894-C-2016

This is an application for restoration of the main appeal.

RSA-1867-1995 (O&M)

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For the reasons stated in the application, the same is allowed and the main appeal (RSA-1867-1995) is restored to its original number and status, subject to payment of Rs.5000/- as costs to be deposited with the Punjab and Haryana High Court Legal Services Committee.

RSA-1867-1995

1. The present regular second appeal has been preferred challenging the judgments and decrees dated 15.04.1994 and 25.03.1995 passed by the Courts below.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for possession by way of specific performance of an agreement to sell dated 06.01.1991 alleged to have been executed by the defendant-respondent in favour of the plaintiff-appellant in respect of land measuring 138 kanals 10 marlas comprised in Khewat No.203, Khatauni No.272 bearing Khasra No.173/1 situated in village Dholbaha Hadbast No.476, Tehsil and District Hoshiarpur for a sale consideration of Rs.1,38,500/-. It was averred in the plaint that an amount of Rs.90,000/- was paid as earnest money and the remaining amount of Rs.48,500/- was to be paid at the time of the execution of the sale deed. The suit was contested by the defendant-respondent on the ground that the agreement was fraudulently executed. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the defendant executed an agreement to sell dated 6.1.1991 in favour of the plaintiff in respect of

suit land alongwith the trees standing thereon ? OPP

2. If issue No.1 is proved whether the agreement dated 6.1.1991 is the result of fraud played by the plaintiff upon the defendant ? OPD

3. Whether the plaintiff has already been ready and willing to perform his part of the contract ? OPP

4. Whether the defendant received a sum of Rs.90,000/- as part payment towards sale consideration on 6.1.1991 at the time of execution of agreement to sell ? OPP

5. If issue No.1 is proved whether the plaintiff is entitled to specific performance of agreement to sell dated 6.1.1991 executed by defendant in favour of plaintiff ? OPP

6. If issue No.5 is not proved whether plaintiff is entitled to the recovery of Rs.1,38,500/-from the defendant ? OPP

7. Relief.

3. The Trial Court vide judgment and decree dated 15.04.1994 decreed the suit for alternative relief of recovery of Rs.90,000/- along with interest @ 12% per annum from the date of institution of the suit till the date of the decree and interest @ 6% per annum thereafter till recovery.

Aggrieved by the said judgment and decree, appeals were preferred by both the plaintiff-appellant and the defendant-respondent. During the pendency of the appeals, a compromise was entered into between the parties. On the basis of the compromise, the statements of both the plaintiff-appellant and the defendant-respondent were recorded which read as under :

“Statement of respondent-Waryam Singh:

I shall pay a sum of Rs.two lacs to the plaintiff Ramesh Chander towards the return of earnest money amounting to Rs.90,000/- as well as liquidated damages within three months from today. On my failure to pay the said amount of Rs.two lacs within the stipulated period, I shall also pay interest at the rate of 12% per annum from the date of order till realization. I undertake not to alienate the suit land till the entire amount is paid by me to the plaintiff.

Statement of plaintiff Ramesh Kumar

I have heard the statement of Waryam Singh defendant-appellant and the same is acceptable to me and the judgment and decree of the trial court be modified in terms of the statement made by Waryam Singh defendant-appellant and the parties be left to bear their own costs in the appeals.”

4. Hence, in view of the statements made by the parties, judgment and decree passed by the Trial Court was modified and the suit was decreed for recovery of Rs.2,00,000/- and the defendant-respondent was directed to pay the said amount within a period of 3 months from the date of the passing of the judgment and decree i.e. 25.03.1995. The present regular appeal has been preferred by the plaintiff-appellant against the said judgment and decree.

5. Learned counsel for the plaintiff-appellant would contend that there was no compromise between the parties and that even the amount has not been deposited.

6. *Per contra*, learned counsel for the defendant-respondent has contended that the statements of the parties were specifically recorded separately on 25.03.1995, which had also been reproduced in the judgment and decree of the First Appellate Court, and that in terms of the compromise an amount of Rs.2,00,000/- was deposited within the stipulated period i.e. on 03.06.1995.

7. Heard.

8. In the present case the argument of learned counsel for the plaintiff-appellant that there was no compromise in the matter deserves to be rejected for the reason that the First Appellate Court had recorded the statements of both the parties, which also find mention in the judgment and decree passed by the First Appellate Court. Learned counsel for the defendant-respondent has also shown the certified copy of the statements

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recorded in Court on 25.03.1995. Learned counsel for the plaintiff-appellant has not been able to deny that the statements were recorded. The second argument of learned counsel for the plaintiff-appellant that since the amount had not been deposited, hence, the compromise was not acted upon is also belied by the receipt of the amount of Rs.2,00,000/- which was deposited in the Treasury on 03.06.1995 i.e. well within the stipulated period.

9. In view of the above no question of law, much less any substantial question of law, arises in the present case. The appeal, which is devoid of any merit, is accordingly dismissed.

10. Dismissed. Pending applications, if any, also stand disposed off.

12.05.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO