

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

(113)

RSA-2649-2022 (O&M)

Date of Decision : January 04, 2023

Pritpal Singh

.. Appellant

Versus

Narinder Kumar

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rakesh Gupta, Advocate, for the appellant.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-9156-C of 2022

As prayed for, the application is allowed.

RSA-2649-2022

Present regular second appeal has been filed challenging the judgment of the trial Court dated 06.07.2013 by which, the suit filed by the respondent-plaintiff Narinder Kumar for specific performance of agreement to sell dated 07.04.2009 has been allowed. Further challenge is to the judgment of the lower Appellate Court dated 31.10.2022 by which the appeal filed by the appellant therein has been dismissed.

Learned counsel for the appellant argues that in the present case, the Courts below have failed to appreciate the fact that the appellant herein had taken a loan from the respondent-plaintiff amounting to Rs.1 lac

in the year 2009 and it was only during the process of accepting the said

loan, he had signed certain blank papers, which has been misused by the respondent-plaintiff to create the agreement to sell dated 07.04.2009 on the basis of which, the suit was filed seeking specific performance.

Learned counsel for the appellant further argues that the deed writer was not examined, which itself shows that the agreement to sell dated 07.04.2009 was created fraudulently by the respondent-plaintiff, hence, the judgment of the trial Court dated 06.07.2013 as well as the order passed by the lower Appellate Court dated 31.10.2022 is liable to be set aside and suit filed by the appellant/plaintiff may kindly be decreed.

I have heard learned counsel for the appellant and have gone through the record with his able assistance.

It may be noticed here that counsel for the appellant conceded before this Court during arguments that no record of the alleged loan, which the appellant has stated to have taken from respondent-plaintiff, has been produced before the Courts below to substantiate the said plea.

Once, there is no document on record to show that the appellant had taken loan, hence question of signing some blank documents in process of the obtaining the loan does not arise, hence, the said argument of the appellant cannot be accepted and has been rightly dealt with by the Courts below.

Further, the Courts below have relied upon the evidence which has come on record to support the judgment impugned in the present Regular Second Appeal, as per which, the attesting witness to the agreement to sell dated 07.04.2009 as well as the resident of village have been examined, who have supported the fact that there was an agreement to sell between the appellant and the respondents and the consideration was paid

by the respondent to the appellant. The agreement to sell was substantiated as per the evidence on record after which, the suit for specific performance of agreement to sell filed by the respondent-plaintiff was allowed.

Learned counsel for the appellant has not been able to rebut the said finding on the basis of evidence on record.

With regard to the perversity of the said finding, arguments raised have remained substantiated by the learned counsel for the appellant. Once finding of fact that there was an agreement to sell has been proved on record on the basis of evidence which has come on record and respondent-plaintiff has completed his part of the agreement to sell, respondent-plaintiff has a right to seek specific performance of the said agreement to sell. Grant of the said relief by the Courts below cannot be faulted with in the facts and circumstances of the case.

Keeping in view the above, no ground is made out for any interference by this Court in the present appeal.

Accordingly, the appeal is dismissed.

CM-9157-C of 2022 and CM-9379-C of 2022

As the main appeal has been dismissed, present applications stand dismissed.

January 04, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No