

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

112

1. RSA-644-1995 (O&M)
Date of decision: 10.05.2024

KARTAR SINGH ..Appellant

Versus

GURDIAL KAUR AND ORS. ..Respondents

2. COCP-1284-1995

KARTAR SINGH ..Appellant

Versus

GURDIAL KAUR AND ORS. ..Respondents

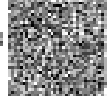
CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sunil Chadha, Sr. Advocate
with Ms. Devyani Sharma, Advocate
for the appellant.

Mr. Krishan Singh Dadwal, Advocate
for respondents (in both cases).

ANIL KSHETARPAL, J(Oral)

1. With the consent of the learned counsel representing the parties, two connected cases i.e. RSA-644-1995 and COCP-1284-1995, shall stand disposed of by this common order.
2. In this regular second appeal, the plaintiff assails the correctness of the judgment passed by the First Appellate Court, which in turn has reversed the judgment of the trial Court. The plaintiff filed suit for specific performance of the agreement to sell. In the alternative, he also prayed for refund of earnest money.
3. Sh. Surjit Singh was the owner of suit land measuring 39 kanal and 10 marlas. He is alleged to have executed agreement to sell in favour of

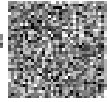


Sh. Kartar Singh (appellant) on 24.12.1986, with respect to 39 kanal and 14 marlas for a total sale consideration of Rs.2,30,000/- out of which Rs.1,15,000/- was received as earnest money. As per the agreement, the sale deed was to be executed and registered on or before 15.06.1987. Sh. Surjit Singh died on 29.06.1987, whereas, the plaintiff filed the suit against widow and children of Sh. Surjit Singh on 16.09.1987.

4. While contesting the suit, the defendants asserted that they have no knowledge of the agreement to sell as thumb impression of Sh. Surjit Singh might have been obtained on blank paper. It was also asserted that there were multiple cases pending between Sh. Major Singh on the one side and Smt. Gurmej Kaur on the other side including civil cases regarding inheritance of property of Sh. Mohinder Singh. The defendants asserted that it appears on that day due to misrepresentation, the agreement must have been got thumb marked from late Sh. Surjit Singh.

5. The trial Court decreed the suit, however, upon reappreciation of evidence, the First Appellate Court has reversed the judgment and decree passed by the trial Court while recording the following reasons:-

- i. The agreement to sell has contained strange stipulation that expenses of the sale deed will be borne 1 ½ (half) by both the parties. The Court has stated that it is the purchaser, who has to bear all the expenses of the registration of the sale deed including stamp duty.
- ii. It is stipulated in the agreement to sell that earnest money paid by the plaintiff to Sh. Surjit Singh would never be forfeited.

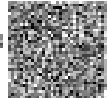


iii. There is a recital in the agreement to sell about the delivery of possession of the property, however, Sh. Kartar Singh (the plaintiff) while appearing in evidence has admitted that the possession of the property was never delivered to him at the time of agreement to sell.

iv. PW-3 Sh. Sohan Singh admitted in his cross-examination that bargain was not struck in his presence in between the parties and the agricultural land was to be purchased by Sh. Kartar Singh for his own use.

6. The Court after analyzing the statement of both the marginal witnesses of the agreement to sell i.e. Sh. Sohan Singh and Sh. Mohinder Singh came to a conclusion that they do not know anything about the agreement and their statements do not inspire confidence of the Court. They have also contradicted regarding delivery of possession of the suit land to the plaintiff. Sh. Kartar Singh has stated in his cross-examination that he was to construct a '*Kanya Mission*', however, both the witnesses have stated that the land was to be purchased for his own use.

7. It has come on record that in case titled as State Vs. Dalip Singh and others, registered under Section 307 and 325 of the Indian Penal Code, 1860, Sh. Surjit Singh was one of the cited witnesses on behalf of the prosecution, however, after the settlement, he was given up. There was a settlement Ex.D-1, which resulted in resolving the various disputes between Sh. Major Singh and Smt. Gurmej Kaur. The aforesaid compromise deed was also signed on 24.12.1986.

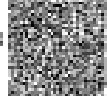


8. Sh. Kartar Singh has stated that the money was paid out of secret donation given to '*Kanya Mission*', however, he did not lead any evidence to prove that fact. Moreover, the plaintiff has also stated that he received the money from Sh. Gurcharan Singh and Sh. Gurmail Singh, however, the aforesaid persons were never examined. On the basis of the aforesaid reasons, the First Appellate Court has found that the agreement to sell is suspicious.

9. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisitioned record.

10. The learned Senior counsel representing the appellant while referring to the agreement to sell submits that late Sh. Surjit Singh has thumb marked on each page. He further submits that Sh. Surjit Singh has also thumb marked the receipt Ex.P-2. While referring to the statement of Sh. Major Singh, he submits that Sh. Kartar Singh and Sh. Surjit Singh refused to sign the settlement, which was arrived at between Sh. Major Singh and Smt. Gurmej Singh. Smt. Gurdial Kaur has admitted receipt of notice before filing of the suit, however, she did not respond. He submits that Sh. Kartar Singh was never connected with the criminal case or civil cases between Sh. Major Singh and Smt. Gurmej Kaur. He further submits that DW-3 Sh. Najir Singh has admitted that he is related to Sh. Surjit Singh and Sh. Surjit Singh was owner of 13 acres of land.

11. Per contra, the learned counsel representing the respondents while referring to the deposition of Sh. Kartar Singh has submitted that his deposition is not worth reliance particularly when he has taken different

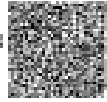


stand about the source from which he got the amount of earnest money. At one stage, he has stated that the earnest money has been paid out of the secret fund available in the secret mission, whereas, in the latter part of his cross-examination, he has stated that the amount was received from Sh. Gurcharan Singh and Sh. Gurmail Singh, with whom he had further entered into an agreement to sell. He further submits that Sh. Shamshinder Singh is the marginal witness of the agreement to sell and receipt. He is son of Sh. Dalip Singh, who was accused in a criminal case.

12. This Court has considered the submissions of the learned counsel representing the parties and perused the judgments passed by both the Courts below.

13. The reasons already recorded by the First Appellate Court and noticed in para No.5 need no reiteration.

14. A bare look at the agreement to sell, it is evident that Sh. Surjit Singh was illiterate. Certain terms of the agreement to sell are not usual. There is no reason why the vendor will bear half of the charges towards stamp duty and registration charges. Moreover, there is a stipulation to the effect that earnest money will never be forfeited, which is again unusual. The evidence of Sh. Kartar Singh does not inspire confidence. He has admitted that possession of the property was never delivered to him. In other words, he is himself admitting that the recital of delivery of possession in the agreement to sell is factually incorrect. Moreover, with regard to the availability of Rs.1,15,000/-, the amount of earnest money, the deposition of Sh. Kartar Singh is totally unreliable. Initially, he says that he paid the amount out of secret fund of '*Kanya Mission*'. Subsequently, he states that



he got the money from Sh. Gurcharan Singh and Sh. Gurmail Singh, with whom he had further entered into an agreement to sell. Moreover, the alleged agreement to sell was executed on 24.12.1986, the same day, when there was settlement between Sh. Major Singh and Smt. Gurmej Kaur. Sh. Dalip Singh is one of the accused, who is related to Sh. Shamshinder Singh, who was attesting witness to the agreement to sell as well the receipt. Additionally, the deposition of both the marginal witnesses namely Sh. Sohan Singh and Sh. Mohinder Singh proves that they had no knowledge of either the bargain or any other information.

15. The conclusion drawn by the First Appellate Court is upon reappreciation of evidence. A plausible view has been taken by the First Appellate Court. Under Section 41 of the Punjab Courts Act, 1918, the scope of interference in the second appeal is limited unless there is substantive misreading or non-reading of material evidence, which affects the result of the case, the Court in regular second appeal is not expected to interfere.

16. Hence, no ground to interfere is made out.

17. The appeal is dismissed accordingly.

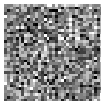
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18. One of the daughter of Sh. Surjit Singh is alleged to have sold her share during the pendency of the appeal despite injunction order.

19. Once the plaintiff's appeal is dismissed, this Court does not find it appropriate to proceed further in the civil original contempt petition.

20. Hence, the civil original contempt petition is disposed of.

21. The learned Senior counsel representing the appellant submits that pursuant to the decree passed by the trial Court, the appellant-plaintiff



has deposited Rs.1,15,000/- in the Court, if that is so, the appellant shall be entitled for return of the amount.

22. All the pending miscellaneous applications, if any, are also disposed of.

May 10th, 2024

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(ANIL KSHETARPAL)
JUDGE

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