
Dalip Chand Vs Mohan Singh

Regular Second Appeal No. 1943 of 2012 (OandM)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 3, 2014

Citation: (2014) 11 P&H CK 0198

Hon'ble Judges: Surinder Gupta, J

Bench: Single Bench

Advocate: Vipin Mahajan, Advocate for the Appellant

Judgement

Surinder Gupta, J.

CM-12958-C-2014

1. Heard.

2. This regular second appeal was dismissed on 29.09.2014 as none had appeared on behalf of appellant despite repeated calls.

3. Learned counsel for the appellant submits that he was busy arguing a case before Coordinate Bench, as such, could not appear when the case

was called.

4. In view of the submission of learned counsel for the appellant supported by his affidavit, the application is allowed and the appeal is restored at

its original number.

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5. Respondents Mohan Singh and Balwinder Singh filed a suit for possession as owners by way of specific performance of agreement to sell dated

04.04.2001 in respect of house measuring 3 marlas out of land comprised in Khewat No. 278, Khatauni No. 379, khasra No. 1454/2(10-9)

situated in revenue estate of Gurdaspur, Tehsil and District Gurdaspur, H.B. No. 337.

6. The case of the plaintiffs-respondents, in brief, is that the appellant-defendant entered into an agreement to sell his house for a sum of Rs.

75,000 and received Rs. 46,400 as earnest money. The sale deed was to be executed on 19.10.2001 and the balance sale consideration was to

be paid at that time. On the day fixed for execution and registration of sale deed, they remained present at the office of Sub Registrar, whereas the

appellant did not turn up and they got their presence marked by swearing an affidavit before the Executive Magistrate. Thereafter, a legal notice

was issued on 21.11.2003 which despite receipt was not replied by the appellant.

7. The appellant contested the claim of respondents with the averments that he was in need of money to construct the house over the plot

purchased by him vide sale deed dated 02.06.2000. The plaintiffs advanced him loan of Rs. 20,000 with interest @ 11% per month and took his

signatures on blank papers and took the sale deed in their possession as security. As the interest was very high, appellant repaid entire loan amount

with interest after 6/7 months and the sale deed was returned by respondents-plaintiffs but they did not return the stamp papers bearing signature

of appellant on the pretext that it had been lost. The house was valued more than Rs. 7 lacs and the agreement dated 04.04.2001 was a forged

and fabricated document.

8. The pleadings of the parties led to the framing of issues as follows:-

(1)Whether the plaintiffs are entitled to specific performance of agreement of contract dated 04.04.2001? OPP

(2)Whether the plaintiffs are entitled to the recovery of suit amount as alleged? OPP

(3)Whether the plaintiffs are ready and willing to perform their part of contract? OPP

(4)Whether the suit is not maintainable? OPD

(5)Whether the plaintiffs have no cause of action to file the present suit? OPD

(6)Relief.

9. The Court of Civil Judge, Gurdaspur, while declining the relief of specific performance of agreement to sell, decreed the suit for alternative relief

for recovery of Rs. 46,400 with interest @ 6% per annum from the date of filing of the suit till its actual realization. The appeal preferred against

the judgment and decree of the lower Court, was dismissed by the first Appellate Court.

10. I have heard learned counsel for the appellant and perused the paper book with his assistance.

11. Learned counsel for the appellant has argued that there was a loan transaction of Rs. 20,000 between the parties and in lieu of that loan

transaction, respondent obtained signatures of appellant on blank stamp papers, which was later on converted into agreement to sell. The appellant

while appearing as DW1, has stated that respondent-plaintiffs while advancing loan advancing loan of Rs. 20,000 obtained his signatures on blank

stamp papers and also took his original sale deed. At the time of repayment of loan amount, the original sale deed was returned and the blank

stamp paper bearing signature of appellant was retained, which was later on converted into agreement to sell. He has further argued that

respondents have not produced marginal witness of the agreement to sell to prove its execution. Satnam Masih, the marginal witness whose

affidavit was tendered, did not turn up for cross-examination.

12. On perusal of the paper book, judgments of the Courts below, pleadings of the parties and statement of witnesses, which were made available

during the course of arguments, I find no substance in argument of learned counsel for the appellant. As per the appellant, he had taken a loan of

Rs. 20,000 from respondent-plaintiffs and to secure the loan, the respondent had obtained his signatures on blank stamp papers and also took his

original sale deed. It is a case where appellant has projected his dealing with persons who were very cautious about the return of their loan amount.

It is not believable that he returned the loan amount, obtained the sale deed but did not insist to return the blank stamp papers bearing his

signatures. The other fact, which belies his statement, is the testimony of Balkar Singh, Deed-writer who has stated that agreement to sell dated

04.04.2001 Ex.P1 was scribed by him at the instance of appellant. The sale transaction was for Rs. 75,000, out of which Rs. 46,400 were paid as

earnest money. He had read over and explained the agreement to the parties and the witnesses, who after admitting the same as correct, have put

their signatures on the same. The appellant had also signed the agreement in English. He made entry of the agreement in his register at serial No.

124 dated 4.4.2001 which was also signed by the appellant. The statement of Deed-writer that the appellant had signed the entry of scribing the

agreement made in his register, is unrebutted. Even if, this part of the version of appellant that his signatures were obtained on blank stamp papers

may be taken as having some substance still there is no explanation put forth as to under what circumstances the appellant signed the entry made

by the deed writer in his register concerning the execution of agreement to sell executed by the appellant.

13. This proves that agreement was executed in the manner as alleged by the respondents. This argument of learned counsel for the appellant that

the marginal witness of the agreement have not been examined, carries no weight as the signatures of appellant on the agreement Ex.P1 are not

disputed. Deed-writer has stated that he has scribed the agreement at the instance of appellant. Respondent Mohan Singh had himself appeared as

PW2 and stated that the agreement was executed by the appellant. The statement of these witnesses are reliable and un-rebutted. Under these

circumstances, the non-examination of marginal witnesses is irrelevant.

14. The Court of Civil Judge, Gurdaspur while deciding the suit filed by the respondent-plaintiffs, allowed the alternative relief of recovery of Rs.

46,400 with interest pendent elite and future @ 6% per annum. The respondents have not challenged the finding of the lower Court by filing any

cross objections or cross-appeal. The first Appellate Court on analysis of evidence led by appellant also found no substance in the plea of the

appellant that his signatures were obtained on blank stamp papers and he had returned the loan amount.

15. As a sequel to my discussion above, I find no infirmity legal or factual in the judgments of the Courts below.
16. No substantial question of law requiring determination arises. This appeal has no merits. Dismissed in limine.