

Joga Singh Vs. Sukhraj Singh

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Court : Punjab and Haryana

Decided On : Sep-21-2005

Reported in : (2006)143PLR566

Judge : M.M. Kumar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100

Appeal No. : Regular Second Appeal No. 3601 of 2001

Appellant : Joga Singh

Respondent : Sukhraj Singh

Advocate for Def. : S.C. Chhabra, Adv.

Advocate for Pet/Ap. : Kanwaljit Singh, Adv.

Disposition : Appeal dismissed

Judgement :

M.M. Kumar, J.

1. This is defendant's appeal filed under Section 100 Code of Civil Procedure, 1908 challenging concurrent findings of fact recorded by both the Courts below holding that the defendant-appellant had entered into an agreement to sell the suit land to the plaintiff-respondent on 17.5.1996 for a sum of Rs. Five lacs and had

also received Rs. Four lacs as earnest money. There is consistent evidence adduced by the plaintiff-respondent. The plaintiff-respondent has produced the attesting witness and the scribe in support of the afore-mentioned finding. The affidavit Ex.P-1 has also been proved on record which is attested by the Executive Magistrate to show the presence of the plaintiff-respondent. It has also been proved on record that notice Ex.P-2, postal receipt Ex.P-4 and acknowledgement Ex.P-3 have also been proved. The trial Court, however, found that the defendant-appellant was owner to the extent of 3/4th share of the land and he was not proved to be owner of the entire property. Therefore, specific performance of the land (agreement(sic)) could not have been ordered and the alternative relief of recovery of earnest money has been granted. Accordingly, the trial Court held that the plaintiff-respondent was entitled to recover Rs. Four lacs with proportionate costs. He was also held entitled to future interest @ 1 per cent over the decretal amount from the date of the suit till the date of decree and interest @ 6 per cent from the date of decree till its realization.

2. On appeal, the findings recorded by the trial Court have been accepted. However, the District Judge partially allowed the appeal in respect of rate of interest by observing that six per cent interest p.a. from the date of filing the suit till its realization at a flat rate is just and fair. With the aforementioned modification the appeal filed by the defendant-appellant was dismissed.

3. When this appeal came up for consideration it was vehemently argued that the consistent stand of the defendant-appellant is that he never thumb marked agreement to sell dated 17.5.1996 which was the stand taken in the written statement filed by him. It was further pointed out that even in the oral statement made before the trial Court, the same stand was taken. On the basis of the aforementioned consistent assertion it was claimed that the evidence of the expert was necessary. After hearing the learned Counsel for the parties, this Court had passed the following order on 22.7.2005.:

Learned counsel for the parties have been heard in detail. The stand of the defendant-appellant right from the reply given to the legal notice is that he has not thumb marked the agreement to sell dated 17.5.1996. The same stand has been

taken in the written statement filed and in the oral statement which he made before the trial Court. Despite the fact that he has moved application for examination of expert and the expert in fact has come, his evidence was closed by order on 14.1.1999. Therefore, in the interest of justice, I am of the view that identity of the thumb impression on the agreement to sell acknowledging the payment of earnest money of Rs. 4 lacs needs to be established because it would go to the root of the case. The help of handwriting expert of government agency like Forensic Science Laboratory, Phillaur would be appropriate as per the suggestion given by both the learned Counsel. It has been agreed by both the learned Counsel that admitted thumb impressions of Joga Singh be obtained in Court and thereafter the admitted thumb impressions along with agreement to sell be sent to the Forensic Science Laboratory, Phillaur. Let Joga Singh, appellant, appear in Court for the aforementioned purpose on 5.8,2005.

Thereafter thumb impressions of Joga Singh were obtained and sent for expert evidence from the Forensic Science Laboratory, Phillaur. The report of the Forensic Science Laboratory has been received in a sealed cover. According to the report the thumb impressions on the agreement to sell are of the same person as there are sufficient points of similarity i.e. matching ridge characteristic details in their identical sequence and therefore, the thumb impressions on the agreement to sell dated 17.5.1996 Ex.P-6 have been found to be of one and the same person.

4. After hearing the learned Counsel and perusing the report of the Forensic Science Laboratory, Phillaur, I am of the considered view that the findings recorded by the Courts below do not call for any interference and that the stand of the defendant-appellant with regard to marking of thumb impressions on the agreement to sell is totally false. The finding with regard to execution of the agreement to sell and the passing of consideration cannot be re-opened by this Court as there is sufficient evidence to sustain those findings. The discretion exercised by the Courts below directing the refund of earnest money along with interest @ six per cent also does not deserve to be interfered with. The appeal is wholly without merit as no question of law warranting admission of the appeal would arise.

5. For the reasons mentioned above, this appeal fails and the same is dismissed with costs which is quantified at Rs. 20,000/-. The imposition of costs have become necessary because the defendant-appellant has erroneously asserted that thumb impressions on the agreement to sell were forged which led to the reference to the Forensic Science Laboratory, Phillaur. The plaintiff-respondent is also not debarred from taking any steps permitted by law for initiating any other proceedings against the defendant-appellant.

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