

1070

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2955 of 2000

Date of decision: 18.11.2015

Mukhtiar Kaur

.....Appellant

versus

Karnail Singh

.....Respondent

Coram: Hon'ble Mr. Justice K.Kannan

Present: Mr. Arun Singla, Advocate for
Mr. Ajay Pal Singh, Advocate
for the appellant.

Mr. Harsh Aggarwal, Advocate
for the respondent.

K.Kannan, J.(Oral)

Counsel seeks for an adjournment stating that the appellants No. 2 and 7 have died. Counsel is unable to however say when they have died. It must be observed that the amendment to the Civil Procedure Code under Order 22 Rule 3 allows for direction of treating a deceased person as alive. Punjab and Haryana High Court amendment of Civil Procedure Code under Order 22 Rule 3 cast an obligation for a party who claim as legal representatives to take steps to implead themselves as such on the death of any party and also makes a fiction for the court to treat the deceased person as alive if there is otherwise sufficient representation.

I invoke the said provision and when asked the counsel to argue but he is not prepared. I have therefore, elicit the facts from the respondents and I must observe that the case does not even involve any substantial question. However, I find that this Court has admitted the appeal without framing the substantial question on 4.10.2001. In order that the admission

which is irregular is rectified. I frame the question if at all to be considered as whether the courts where justify in decreeing the suit on the basis of version of witnesses and the scribe apart from the plaintiffs version both the genuineness of the agreement.

It is a case where the suit has been filed for specific enforcement of an agreement dated 27.12.1988 for sale of property for a consideration of ₹2,52,500/-. The document recited an advance of ₹40,000/- as having been paid and the date for completion of the agreement was stipulated as 15.12.1989 after payment of balance of consideration. The plaintiffs case was that the defendant was attempting to sell the property in breach of the agreement, had to another person necessitating the plaintiff to sue for injunction even within the time stipulated. When the defendant filed a written statement denying the agreement dated 27.12.1988, the plaintiff issued a notice on 16.09.1989 expressing his readiness and willingness to perform his part of contract and also filed a suit for specific performance within the time stipulated namely on 26.10.1989. After issuing notice and eliciting no response of the defendants filed a suit for specific performance.

At the trial, the plaintiff sought to prove the agreement by examining the scribe as PW-1 and the witnesses found in the document as PW-2 and PW-3. He gave his own version as PW-4 and the defendant gave merely his own version denying the document. Another witness Harnek Singh gave evidence that he knew the parties and no agreement was ever written. The trial court found the evidence of the witnesses to be worthy after acceptance and granted the decree. The appellate court confirmed the sale. The decree granted was purely on appreciation of facts relating to the genuineness of the document, I find even nothing substantial in appeal for

interference.

The respondent-plaintiff is directed to pay the balance of consideration with interest at 9% p.a. from the date of withdrawal from court of if balance of consideration had not been deposited already from the date when the amount was directed to be deposited originally by decree, if already withdrawn within a period of 30 days from the date of receipt of copy of this order before the executing court and secure the sale deed in accordance with law. It shall be open to the defendants to complaint or breach and seek for rescission of the decree, if the direction for deposit of balance if not complied with.

Regular Second appeal is dismissed with costs assessed at ₹5,000/- against the appellant and in favour of the respondent.

18th November, 2015
Shivani Kaushik

[K.KANNAN]
Judge