

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

RSA No.3381 of 2010(O&M)
Date of decision: 11.02.2015

Lali

...Appellant

Versus

Dhakeli and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. BS Tewatia, Advocate for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was dismissed by the trial court vide judgment and decree dated 30.08.2008. Appeal preferred against the said decree failed and was dismissed on 06.01.2010. This is how, plaintiff is before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

Plaintiff prayed for a decree for possession by way of specific performance of the agreement to sell dated 09.12.1998. A declaration was also claimed that the sale deed dated 22.04.1999, executed by defendant No.1, in favour of defendant No.2, qua the suit property was null and void. And a sham transaction. A decree for injunction was also claimed, restraining defendant No.2, from alienating the suit property

in any manner. It was averred that the agreement to sell, dated 09.12.1998, was executed by defendant No.1, in favour of the plaintiff, qua the suit property for a total sale consideration of ₹ 1,69,000/-. A sum of ₹ 1,50,000/- was allegedly paid by way of earnest money at the time of execution of the agreement. The date fixed for execution and registration of the sale deed was 17.01.2000. It was maintained that the plaintiff appeared before the Sub Registrar, Hodel on the appointed date and was equipped with the balance sale consideration and requisite funds to defray the necessary expenses, but defendant No.1 failed to turn up to perform his part of the contract. Resultantly, plaintiff got her presence recorded before the Sub Registrar by getting an affidavit attested in this regard. Thus, plaintiff has always been ready and willing to perform her part of the contract. On the contrary, defendant No.1 sold the suit land to defendant No.2, pursuant to a sale deed dated 22.04.1999. Further, defendant No.2 had due notice and knowledge of the agreement in question, but yet intentionally got a sale deed executed in his favour in collusion with defendant No.1. Thus, the suit.

Concededly, defendant No.1 did not file any written statement.

In defence, it was pleaded, inter alia, by defendant No.2 that the suit property was sold by defendant No.1 to him,

pursuant to a registered sale deed dated 22.04.1999. The alleged agreement to sell, dated 09.12.1998, was fraudulently procured by the plaintiff. In fact, post execution of the sale deed, in favour of defendant No.2, plaintiff along with defendant No.1 moved a false application/ complaint alleging that defendant No.1 did not possess a free and sound disposing mind and, therefore, the sale deed dated 22.04.1999, executed by defendant No.1, was required to be cancelled. However, on investigation conducted by SDO(C), Hodal, the said complaint was found to be false. It was maintained that if at all, there had been an agreement to sell, in favour of the plaintiff, the same would have found mentioned in the said complaint. Or the plaintiff would have filed a suit immediately. On the contrary, defendant No.2 had paid full sale consideration to defendant No.1 and thus, was the owner in possession of the suit property.

On a consideration of the matter in issue and the evidence on record, the courts below found that the execution of the agreement to sell, dated 09.12.1998, Ex.P1, was duly proved. Thus, the issue to be determined was as to whether the said document was indeed ante-dated or not? Concededly, post execution of the sale deed, dated 22.04.1999, a complaint was made by defendant No.1 to the Deputy Commissioner and SDM, Hodal, for cancellation of the sale deed, executed in favour of defendant No.2. However, the said complaint does

not refer to any such agreement that was purportedly executed by defendant No.1 in favour of the plaintiff. Accordingly, it was observed that had there been any such agreement, then certainly, it would have found mentioned in the said complaint. Further, one of the attesting witnesses of the agreement in question i.e. Shyam Lambardar, was never examined by the plaintiff in support of her claim. Particularly, when the sale deed, executed by defendant No.1, in favour of defendant No.2, was assailed by propounding a prior agreement to sell, executed by defendant No.1, in favour of the plaintiff. B.D. Sorout, Advocate, PW2, who purportedly scribed the agreement, could not even tell the name of the typist, who had typed the agreement dictated by him. Further, the agreement in question was executed on a stamp paper that was alleged to have been purchased on 09.12.1998, but the plaintiff failed to examine the stamp vendor to prove her claim. Not just that, the recitals in the agreement in question showed that the amount that was paid by way of earnest money by the plaintiff to defendant No.1, was acknowledged vide a separate receipt executed by defendant No.1. However, no such receipt was brought on record. And even if document, Ex.P1, was admitted to be an agreement cum receipt, no revenue stamps were affixed thereupon, so as to make the document admissible in law. Though, a substantial amount was alleged to have been advanced by way of earnest money and plaintiff,

PW4, maintained that the said amount was withdrawn by her from her bank account, but she conceded that she had no proof in this regard. Therefore, it was concluded that no such amount was ever paid by the plaintiff to defendant No.1. And thus, the agreement in question was wholly without consideration. On an analysis of the agreement to sell, dated 09.12.1998, Ex.P1, it was further found that the stamp paper, upon which the agreement in question was executed, was old and mutilated. Post execution of the sale deed dated 22.04.1999, defendant No.1 remained alive for a period of three years, but he never chose to question the sale deed purporting fraud. In fact, plaintiff and defendant No.1 were closely related to each other and thus, there was every probability of both having connived with each other to frustrate the sale deed, executed in favour of defendant No.2. The execution of the sale deed, dated 22.04.1999, was duly proved and this was never the case of the plaintiff that the said sale deed was a result of fraud practiced upon defendant No.1. Though, plaintiff sought to set out a different stand while leading evidence and maintained that defendant No.1 was not in a free sound disposing mind at the time of execution of the sale deed. But nothing was brought on record to prove that defendant No.1 indeed did not possess a free and sound disposing mind. That being so, the suit filed by the

plaintiff was dismissed and thereafter even the appeal preferred against the said decree failed.

I have heard learned counsel for the appellant at length and perused the RSA paper book.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Ex facie, the execution of the sale deed dated 22.04.1999, executed by defendant No.1, in favour of defendant No.2, was duly proved on record. For plaintiff to succeed, she was required to prove that the agreement in question was indeed executed by defendant No.1, in her favour on 09.12.1998. Post execution of the sale deed dated 22.04.1999, defendant No.1 and plaintiff had made a complaint against defendant No.2, to Deputy Commissioner and SDM, Hodal, praying for cancellation of the sale deed dated 22.04.1999. However, on investigation, not only that said complaint was found to be false, but an analysis thereof does not show that there was any reference to the agreement in question. So much so, after execution of the sale deed dated 22.04.1999, defendant No.1 remained alive for a

period of three years, but he never chose to question the said sale deed. Plaintiff, to prove her claim, examined B.D. Sorout, Advocate, PW2, who purported to have scribed the agreement in question, however, he conceded in his cross-examination, that he had only drafted two documents during his career. He further conceded that he never maintained any register as regards the documents drafted by him. He even failed to tell the name of the typist, who typed the agreement dictated by him. Evidence on record showed that regular Deed Writers were available in the premises. Agreement in question was executed upon a stamp paper, that was purportedly purchased on 09.12.1998, however, plaintiff failed to examine the stamp vendor to prove her claim. So much so, courts below, on a consideration of the agreement, recorded that the stamp paper upon which the agreement was typed was old and in an extremely mutilated condition. The recitals in the agreement in question revealed that a separate receipt qua acknowledgment of earnest money was executed by defendant No.1, but no such receipt was ever proved on record. Plaintiff conceded that she could not lend any proof that she had withdrawn certain amount from her bank account to advance the earnest money to defendant No.1. That being so, the only and the inevitable conclusion that one could arrive at was that the agreement to sell, dated 09.12.1998, was an ante-dated document. Particularly, when it was established on record that

plaintiff and defendant No.1 were closely related to each other. Learned counsel for the appellant could not point out as to how the conclusions that were concurrently recorded by both the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

February 11, 2015
Rajan

(Arun Palli)
Judge