

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Regular Second Appeal No. 3824 of 2012

DATE OF DECISION : August 20, 2015

Sheela

..... APPELLANT

VERSUS

Ghaman Singh

.... RESPONDENT

CORAM : HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Ashok Kumar, Advocate, for the appellant.
Mr. Kulvir Narwal, Advocate, for the respondent.

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1. Whether Reporters of local newspapers may be allowed to see the judgment? YES/NO

2. To be referred to the Reporter or not? YES/NO

3. Whether the judgment should be reported in the digest? YES/NO

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ARUN PALLI, J. (Oral)

Suit filed by the plaintiff was decreed by the trial Court, vide judgment and decree dated 11.10.2010. Appeal preferred against the said decree failed and was dismissed by the Ist Appellate Court vide judgment dated 06.04.2012. This is how, defendant is before this Court in this Regular Second Appeal.

Parties to the lis, hereinafter, will be referred to by their original

positions in the suit.

In a suit filed by the plaintiff, he prayed for a decree for possession by way of specific performance of the contract dated 16.11.2004 in respect of the suit land i.e. a plot measuring 3 marlas, comprised in Khewat No.745, Khatoni No.847, Rectangle and Killa No.57/24, situated within the revenue estate of Village Bahu. It was pleaded that the total sale consideration that was settled between the parties was ₹72,000/-, of which ₹12,000/- were paid by the plaintiff by way of earnest money at the time of execution of the agreement to sell. The last date for execution and registration of the sale deed was 15.11.2005 and as 15.11.2005 was a holiday, plaintiff remained present in the office of Sub Registrar, Mantanhail, on 14.11.2005, as also on 16.11.2005, along with the balance sale consideration. But the defendant failed to turn up and perform her part of the contract.

In defence, it was pleaded, inter alia, that the defendant never executed any such agreement in favour of the plaintiff on 16.11.2004. She was not even the owner of the plot in question at the time of execution of the alleged agreement dated 16.11.2004. Thus, she had no right to enter into any contract either. In fact, defendant had obtained a sum of ₹10,000/- from the plaintiff as loan for the marriage of her daughter and had executed a pronote in his favour. In the process plaintiff got her thumb impression on certain blank papers and fabricated an agreement. Later, defendant also obtained another sum of ₹2,000/- from the plaintiff for the same

purpose and this time, plaintiff obtained the thumb impression of defendant's husband on the documents.

On an analysis of the matter in issue and the evidence on record, the trial court arrived at a conclusion that the oral as well as documentary evidence on record proved that the defendant had indeed executed an agreement to sell dated 16.11.2004 (Exhibit P-6) in favour of the plaintiff and she had failed to perform her part of the contract. Although defendant denied the very execution of the agreement and the same was alleged to be a forged and fabricated document, but no evidence was brought on record to substantiate the said plea. It was observed that the plea of fraud, once raised, was required to be proved by the defendant beyond a reasonable doubt and a mere plea in the written statement could hardly establish that the agreement in question was, indeed, a fabricated document. Thus, plaintiff was held entitled to the decree prayed for.

Being aggrieved against the said decree, defendant preferred an appeal. Learned Ist Appellate Court reviewed the matter in issue, evidence on record and, on an analysis thereof, found itself in concurrence with the findings recorded by the trial Court. The appeal was, accordingly, dismissed.

I have heard the learned counsel for the parties and perused the 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 wholly devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Needless to assert, for plaintiff to be entitled to the decree for specific performance, he was required to prove that the agreement to sell dated 16.11.2004 (Exhibit P6) was indeed executed by defendant in his favour. Ram Kumar Sharma, Deed Writer, Jhajjar (PW-3) testified the execution of the agreement by defendant-Sheela, in favour of plaintiff-Ghaman Singh, in the presence of his son-Satyavir. He deposed that the contents of the agreement (Exhibit P6) were read over to the parties and, having accepted the same to be correct, defendant-Sheela put her thumb impression on the document. So much so, even husband of the defendant; namely, Om Parkash, was also present at the time of execution of the agreement and he too thumb marked the said document. A sum of ₹12,000/-, in cash, was received by Sheela from Satyavir and he put his thumb impression on the document on behalf of his father. Thereafter, attesting witnesses; namely, Maru Singh, Nambardar, and Jai Lal, also put their thumb impressions on the agreement (Exhibit P6). Not just that, he also proved the entries regarding execution of the agreement (Exhibit P6) in his register at Serial No.460 dated 16.11.2004. The Power of Attorney (Exhibit P1) executed by plaintiff-Ghaman Singh in favour of his son-Satyavir, was also proved by PW-3 in his testimony. Maru Singh, Nambardar, Village Bahu (PW-2) also proved the execution of

the agreement at the instance of defendant-Sheela along with her husband-Om Parkash, who had come to Jhajjar to execute the agreement in favour of Ghaman Singh on 16.11.2004. Not just that, son of the plaintiff; namely, Satyavir, who appeared as PW-1 fully proved the claim of the plaintiff. Nothing was brought on record, least a cogent evidence, to show that the agreement to sell dated 16.11.2004 was, indeed, a forged and fabricated document and was obtained by fraud. Non appearance of the plaintiff in support of his claim could hardly be fatal to his interest as his son, who had entered into an agreement on behalf of his father and thumb marked the agreement, appeared and proved the document. He also happened to be the Power of Attorney holder of the plaintiff and personally knew all the facts and details. Likewise, the plea that defendant had inherited the suit property from her father and mutation in this regard was sanctioned in her favour on 19.10.2005 i.e. after execution of the alleged agreement, would also not advance her case a bit. Concededly, father of the defendant; namely, Tara Chand, had died on 09.09.2003 and defendant had already acquired title by natural succession and, thus, she indeed was the owner of the plot in question, at the time of execution of the agreement to sell on 16.11.2004. Not just that, nothing was brought on record to show that the defendant had indeed obtained a sum of ₹10,000/- by way of loan for the marriage of her daughter. And had executed a pronote in his favour. No evidence was led to show that the defendant actually performed her daughter's marriage around

the same time when agreement in question was executed.

Learned counsel for the appellant could not point out as to how the conclusions that have concurrently been 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. No question of law, much less any substantial question of law, arises for consideration. The same being devoid of merit is, accordingly, dismissed.

AUGUST 20, 2015
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(ARUN PALLI)
JUDGE