

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 4360 of 2013 (O&M)
Date of decision:- 07.04.2015

Gurbinder Kaur

...Appellant

Versus

Jangir Singh and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. I.S. Brar, Advocate
for the appellant.

RITU BAHRI J.

C.M. No. 11766- C of 2013

For the reasons mentioned in the application,
delay of 61 days in re-filing the present appeal is condoned.

The application stands disposed of accordingly.

R.S.A No. 4360 of 2013

This regular second appeal is against the judgment and decree dated 30.01.2013 passed by learned Addl. District Judge Faridkot whereby the appeal filed by the plaintiff-appellant (herein after to be referred as 'appellant') against the judgment and decree dated 16.07.2009 passed by learned Civil Judge (Jr. Divn.), Faridkot, was dismissed.

Initially, appellant and Sukhdarshan Singh filed a suit against defendant-respondent No.1 Jangir Singh (for short 'respondent No. 1') for possession through specific performance of agreement to sell dated 19.01.2006 regarding land measuring 16 kanals 10 marlas, bearing

khasra Nos. 279/1(6-13), 280/1/1 (7-10), 280/1/2 (2-7), khewat No. 4 Khatoni No. 14, situated in the revenue limits of village Sher Singh wala along with all rights in it, kotha, bore fixwell etc, or in the alternative suit for recovery of Rs.4,84,690/-.

As per terms and conditions of the agreement, Jangir Singh agreed to sell his land measuring 16 kanals 10 marlas at the rate of Rs.2,35,000/- per acre and executed an agreement to sell on the same in favour of the appellant and respondent No. 2-Sukhdarshan Singh and has received a sum of Rs.1,00,000/- as earnest money from the appellant and respondent No.2 at the time of execution of agreement to sell in the presence of marginal witnesses. Respondent No. 1 has agreed to get executed the sale deed on or before 01.06.2006 after receiving the balance sale consideration. respondent No. 1 also agreed that some area out of the said land has been acquired and come under the Canal Minor. After deducting the said area and after getting the land demarcated, respondent No. 1 would execute the regard sale deed in favour of the appellant and respondent No. 2. However, on 01.06.2006, appellant and respondent No. 2 remained present in Tehsil premises along with remaining sale prices and expenses, for whole of the day, but respondent No. 1 did not turn up their to execute the sale deed. Appellant and respondent No. 2 got attested an

affidavit from Notary regarding his presence to show his readiness and willingness to get the sale deed executed. Appellant and respondent No. 2 filed a suit for permanent injunction against respondent No. 1 titled as Sukhdarshan Singh and another vs. Jangir Singh. However, the suit was withdrawn, as the proper remedy available to them, is to file a suit for specific performance. Hence, the suit was filed by appellant and respondent No. 2.

From the pleadings of the parties, following issues were framed:-

“1. Whether the plaintiffs are entitled to possession of the suit land by way of specific performance of the agreement dated 19.01.2006? OPP

1.-A “If issue No. 1 is not proved, whether the plaintiff is entitled for alternative relief of recovery of Rs.4,84,690/-, along with interest as prayed for? OPP

2. Whether suit is not maintainable? OPD

3. Whether the agreement is forged and fabricated? OPP

4. Relief.

To prove its case, respondent No. 2 himself appeared as P.W.1 and tendered into evidence his affidavit as Ex PW1/A and reiterated the version of the plaint and also tendered original agreement as Ex PA, affidavit for marking his presence as Ex PB and controverted all the averments of respondent.

P.W.2 Jagtar Singh tendered into evidence his duly sworn affidavit as Ex PW2/A, in which he stated that both the

parties are known to him and supported the version of the plaintiff. He stated that the agreement was drafted and dictated by Mr. Push Dev Singh Gill and it was got typed at the instance of respondent No. 1 and the same read over and explained to respondent No. 1 in his presence and other marginal witness Iqbal Singh. He also identified his signatures on agreement Ex PA.

P.W.3 Iqbal Singh tendered into evidence his duly sworn affidavit as Ex PW3/A and supported the version of the plaintiffs and identified his signatures on Ex PA. Except the plaintiffs, both the witnesses were cross examined by the learned counsel for the accused but respondent No. 1 did not cross examine the plaintiffs, although the opportunity was given and the plaintiffs closed the evidence.

Respondent No. 1 availed several opportunities to adduce his evidence but did not produce a single witness. He himself did not appear to depose in his own favour to substantiate his version of written statement. The evidence of respondent No. 1 was closed on 01.06.2009.

The trial Court after going through the entire evidence dismissed the suit of the appellant for specific performance of agreement to sell dated 19.01.2006, being not pressed as counsel for the plaintiffs suffered the statement and relinquished the main relief of specific performance. Hence, the suit for alternative recovery of

Rs.1,00,000/- was decreed with costs and the plaintiffs were held entitled for alternative relief of recovery of Rs.1,00,000/- from respondent No. 1 along with interest @ 9% per annum from the date of execution of agreement to sell till the date of decree and the plaintiffs were also held entitled for future interest @ 6% per annum from the date of decree till its realization.

Feeling aggrieved against this order, appellant filed an appeal against the respondents on the ground that the suit should have been decreed for specific performance of agreement to sell, as the statement was made by respondent No. 2 for an alternative relief and this statement did not bind the appellant, since the agreement to sell was duly proved and the appellant appeared before the Sub Registrar for execution of the agreement to sell. This aspect has been dealt by the lower Appellate Court in detail in para 12 of the judgment wherein it has been stated that it is not plea of the appellant that Karnail Singh, Advocate was not engaged by her and the said statement is wrong or she withdraws the same. Further that her counsel has committed any mis-representation with her or she has ever filed any complaint against her counsel before the appropriate authorities. The learned trial Court rightly relied upon the statement made by one of the plaintiffs and counsel for the plaintiffs. It is not the requirement of law that the statement

made in Court should be signed by all the plaintiffs. Since, in the heading as well as in para No. 8 of the plaint alternative recovery of earnest money was sought by the plaintiffs, the learned trial Court has rightly awarded alternative relief of recovery of money received as earnest money. The appeal was thus dismissed.

Keeping in view the judgment passed by both the Courts below and keeping in view that the present appellant had not raised any plea of mis-representation against her counsel Karnail Singh, now her plea that her suit should have been decreed for specific performance of agreement to sell, has been rightly rejected by the Lower Appellate Court by holding that the trial Court has rightly accepted the statement made by learned counsel for the plaintiffs.

The judgments passed by both the Courts below, calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, R.S.A is dismissed

April 07, 2015
G Arora

(RITU BAHRI)
JUDGE