

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A. No. 1763 of 2014 (O&M)

Date of Decision:- 06.05.2015

Har Kaur

.....Appellant

Versus

Harbhajan Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present: Mr. Ashish Verma, Advocate, for the appellant.

SHEKHER DHAWAN, J.

Present Regular Second Appeal is against the judgment and decree dated 04.02.2015, passed by District Judge, Patiala, whereby the appeal filed against the judgment and decree dated 01.02.2013, passed by Civil Judge, (Jr. Divn.), Rajpura was dismissed.

2. For the sake of convenience, the parties are being referred to as per their status before the Court of first instance.

3. The detailed facts of the case have already been recaptured in the judgments of the Courts below. However, relevant facts for the purpose of decision of present Regular Second Appeal are that the suit for specific performance of agreement of sale dated 10.11.2005 for total sale consideration of ₹5,00,000/-. The entire sale consideration has been

received from the plaintiff and the sale deed was to be executed on receipt of stamps, registration and other allied expenses and in the alternative suit for recovery of ₹5,00,000/-. As per plaintiff, defendant also executed general power of attorney in favour of the plaintiff on the same date, so as to deal with the said property, which was subject matter of the agreement. The authority was to the extent of alienation and sale of the property as well. The plaintiff always remained ready and willing but defendant avoided to perform her part of contract of the agreement. Legal notice was issued to get the sale deed executed on 17.03.2006 and on that date plaintiff remained present in the office of Sub-Registrar but defendant did not turn up. The plaintiff got his presence marked by getting his affidavit attested from Executive Magistrate, Rajpura on the same date.

4. The defendant took the plea that she never agreed for sale of land measuring 4 bighas and 4 biswas, as per alleged agreement and no payment of ₹5,00,000/- was received by her on 10.11.2005. The alleged agreement, if any, is result of fraud. In fact the father of plaintiff is real brother of the defendant and he had obtained general power of attorney by making misrepresentation. Otherwise, the defendant is an illiterate lady and plaintiff was in a position to dominate her will being her brother. She got cancelled the power of attorney vide vasika No.456 dated 10.11.2005. Legal notice was served upon the plaintiff. Injunction suit was also filed against Teja Singh. As per defendant, father of the plaintiff might have got thumb impression of the defendant on the alleged

agreement of sale by taking undue advantage of illiteracy and prayed that suit be dismissed. On these facts the Court of first instance settled issues and parties were put to trial.

5. After recording of evidence and appreciation of evidence, the Court of first instance returned the findings that agreement of sale was duly executed and plaintiff was entitled to get the specific performance on said agreement. Defendant challenged the said judgment by way of first appeal but remained unsuccessful and present appeal before this Court.

6. At the time of arguments, Mr. Ashish Vema, Advocate, learned counsel for the appellant took the plea that the agreement has not been duly proved, as attested witnesses and scribe had not supported the version of plaintiff. In absence of that, the suit of the plaintiff is liable to be dismissed. Per contra, learned counsel for the appellant, plaintiff and his father were in a position to dominate the will of appellant by making the misuse of their relationship and illiteracy of appellant might have obtained thumb impression. Both the Courts below have completely ignored these facts while returning the findings and the said findings are liable to be reversed and appeal be accepted.

7. Having considered the submissions made by learned counsel for the appellant and perusal of the record would reveal that both the Courts below have recorded the concurrent findings. The execution of agreement dated 10.11.2005 stood proved. The plea taken by learned counsel for the appellant that in fact the appellant was victim of fraud and

misrepresentation at the hands of the respondent. The Courts below have rightly recorded the findings that defendant did not make any complaint before the police authority regarding fraud or forgery, which indicates that appellant had complete knowledge about execution of the agreement of sale (Ex.P1). Otherwise also, the onus was lawfully upon the defendant to prove the plea of fraud. It is a settled principle of law that fraud is required to be proved just like a charge in a criminal case because it is very easy to allege fraud but the requirement of law is that the fraud must be proved strictly and that has not been done in the present case.

8. As regards examination of witnesses to the agreement, one of the attesting witness Daya Singh could not be examined as he died, and other witness namely Gurnam Singh resiled, as the later colluded with the appellant. To the contrary, the plaintiff has been able to lead documentary evidence so as to establish that the agreement of sale was executed keeping in view the market value and suit land, as is evident from copies of sale deed Ex.D-6 to D-8 of the same area.

9. In view of the above, there is no substantial question of law involved in the case and concurrent finding of facts have been recorded by the Courts below. There are no grounds to interfere in the said findings by way of present Regular Second Appeal. Hence, the present Regular Second Appeal is without any merit and the same stands dismissed.

May 06, 2015
naresh.k

(SHEKHER DHAWAN)
JUDGE