IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Regular Second Appeal No.2469 of 2015 (O&M)
Date of decision: 18.08.2015

Shiv Dutt and others ... Appellants

versus

Smt. Sukhbiri .... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.Aayush Gupta, Advocate,
for the appellants.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. *(Oral)*

1. The appeal is against a decree granted for recovery of ₹16,06,200/- being the aggregate of sale consideration, stamp duty and registration charges by way of damages for the failure of the vendor- Indraj's representative to support title for the property purported to be sold by Indraj, after his death. The plaintiff sought for recovery of money on a plea that Indraj had actually sold the very same property earlier on 08.06.2007 to one Sunita Devi and the purchase by the plaintiff, therefore, cast a cloud on title and the suit was filed immediately after the death of Indraj against the legal

representatives for the failure of consideration that resulted. The defendants took up several pleas regarding the maintainability but substantive defence was that the amount of ₹16 lakhs had been paid on various dates and entered in a student note book. The payments were said to have been made on 01.08.2009, 25.08.2009, 19.09.2009, 04.11.2009, 09.01.2010 and 16.12.2010. The defendant stated that the plaintiff's husband Sher Singh had signed against the last entry and it was also witnessed by one Gangi Labardar (DW2), who spoke about the fact of payments and the plaintiff's husband's signatures. The defendant also attempted to prove the signature of the plaintiff's husband through an expert testimony.

2. The trial court found that the so-called entries of payments on various dates did not contain the signature of the plaintiff or the plaintiff's husband but there was only an alleged signature of the plaintiff's husband after the last entry. The court found that there was a clear contradiction about the evidence of DW2-Gangi Lambardar and Sukhbiri as regards the mutual presence of witnesses on various dates. It was not clearly brought out in evidence as to the actual presence of these witnesses on each one of the dates when the amounts had been allegedly paid. The court found that there was nothing like a regular business accounting and some payments alleged to have been made and recorded by the

defendant in a note book were self-serving in nature. The most crucial aspect that was required to be shown was the source of money for the amounts said to have been paid and no proper evidence had been given about the source of funds as well and the court found that it was not possible to defeat the claim on such a fragile pieces of paper on which the defendants were trying to set up for discharge of liability. This decision was also affirmed in the appellate court.

3. The counsel for the appellants would state that the plaintiff was not even examined and only the plaintiff's husband was examined. If in this case, the payments were said to have been made through Sher Singh, the plaintiff's husband, the non-examination of the plaintiff's husband alone would have been truly crucial, for, the so-called discharge of liability was sought to be proved only through payments to the plaintiff's husband. In this case, the plaintiff's husband has placed himself at the witness-stand and has denied having received any amount. The payment of consideration and the expenses incurred under the sale deed executed by the defendant's predecessor Indraj itself is not denied. The examination of the plaintiff, who was a vendee under the purchase, was, therefore, unnecessary. Indeed the law provides for an exception that in a party to a civil suit, the husband or the wife, as the case may be, will be competent witness under Section 120 of the Indian Evidence Act.

If the plaintiff's husband was said to have not passed a receipt, there must be credible evidence on why large payments totalling upto ₹16 lakhs came to be made without any receipt therefor. Several entries alleged to have been made by the defendant in their own book are a clumsy manner of attempting to prove a discharge of legal liability brought through a registered document. The evidence of witnesses was most artificial, for, the signatures of witnesses in a book, which does not spell out any discharge of liability in a registered document, could not have been done without a specific recital about how the payments had gone to completely discharge the liability under the transaction of sale, which failed. There was even a half-hearted attempt made by the defendants to state that there was no liability to even make the payment. If the defendants were not sure about such a liability, it is inconceivable that they have volunteered to make such payments and entered in a piece of paper. The defence betrayed a wholesale falsity and correctly rejected by both the courts below. The second appeal is without any merit and it is dismissed as requiring no fresh consideration, involving no substantial question of law.

(K.KANNAN)
JUDGE

18.08.2015
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