

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1322 of 2014 (O&M)
Date of Decision: May 15, 2015

Gurmit Kaur

...Appellant

Versus

Joginder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Inderjit Sharma, Advocate
 for the appellant.

INDERJIT SINGH, J.

CM No.5585-C of 2015

The application is allowed subject to all just exceptions.
 The copies of judgment and decree dated 02.12.2006 passed by learned Civil Judge (Junior Division), Batala and judgment and decree dated 25.10.2013 passed by learned Addl. District Judge (A), Gurdaspur, are taken on record.

RSA No.1322 of 2014

Appellant Gurmit Kaur has filed this regular second appeal against Joginder Singh respondent, challenging the impugned judgment and decree dated 02.12.2006 passed by learned Civil Judge (Junior Division), Batala, vide which the suit filed by Gurmit Kaur for permanent injunction was decreed and suit filed by Joginder Singh for possession by way of specific performance was also decreed and also

the judgment and decree dated 25.10.2013 passed by Addl. District Judge, Gurdaspur, vide which the appeal filed by Gurmit Kaur was dismissed.

The brief facts of the case are that vide judgment and decree dated 02.12.2006, two suits have been filed i.e. one filed by Gurmit Kaur against Joginder Singh for permanent injunction and other suit filed by Joginder Singh against Gurmit Kaur for possession by way of specific performance of agreement to sell. Both these suits have been consolidated by the Civil Judge.

The brief fact as given in the suit for specific performance filed by Joginder Singh are that Gurmit Kaur is the owner in possession of the house in dispute. Gurmit Kaur mortgaged the house in dispute with Joginder Singh on 21.04.1997 for ₹70,000/- and delivered the proprietary possession of the said house to Joginder Singh. On the same day, Gurmit Kaur agreed to pay the rent of the house equivalent to 3% interest of the mortgaged amount per month. Later on, Gurmit Kaur agreed and contracted with Joginder Singh to sell the afore-said house for ₹1.25 lacs and executed a valid agreement dated 15.09.1997 in favour of Joginder Singh whereby Gurmit Kaur agreed to transfer and sell the house to Joginder Singh. A sum of ₹30,000/- was paid to Gurmit Kaur as earnest money. The sale deed was to be executed by 31.12.1998 and it was also agreed that mortgage amount of ₹70,000/-, which was paid at the time of execution of mortgage deed, will be adjusted towards sale consideration in the sale deed. It is further stated that Joginder Singh

remained ready and willing and is still ready and willing to perform his part of the contract. It is also the case of Joginder Singh that he was ready and willing on 31.12.1998 but Gurmit Kaur did not turn up to execute the sale deed.

The case of Gurmit Kaur in this civil suit is that she is owner in possession over the suit property and denied that she ever agreed to sell the house in dispute for ₹1,25,000/- on 15.09.1997. Receiving of ₹30,000/- as earnest has also been denied. It is further stated that there is no question of entering into alleged agreement at throw-away price when the market value of the house in dispute is not less than ₹3 to 4 lacs. She further stated that she is an illiterate and can hardly sign in Punjabi. It is also stated that on 15.09.1997, she paid the mortgaged amount of ₹70,000/- to Joginder Singh and asked him to issue the receipt and return the original mortgage deed. Joginder Singh by taking undue benefit of the illiteracy, returned the original mortgage deed, which belonged to one Chanan Singh with ulterior motive. It is further stated that a criminal complaint is also pending. The alleged agreement is fabricated by Joginder Singh and is null and void.

Both the parties produced evidence and on the basis of the evidence, learned Civil Judge (Junior Division) Batala, vide judgment and decree dated 02.12.2006, decreed the suit for specific performance filed by Joginder Singh. An appeal was filed by Gurmit Kaur and learned Addl. Sessions Judge, Gurdaspur also dismissed the appeal vide judgment and decree dated 25.10.2013.

At the time of arguments, learned counsel for the appellant argued as per the case in the written statement and stated that both the Courts below have misread the evidence.

After hearing learned counsel for the appellant and after going through the record, I find that Joginder Singh has examined DW-1 Jatinder Mohan, Deed Writer, DW-2 Satish Chander, Draftsman, DW-3 Sardari Lal, Deed Writer and he himself stepped into witness box as DW-4 and also examined DW-5 Manjit Singh, attesting witness to prove the execution of the agreement to sell. On the other hand, Gurmit Kaur examined PW-1 Darshan Kaur, PW-2 Amarjit Kaur, PW-3 Harbhajan Singh, Advocate, PW-4 Chanan Singh and examined herself as PW-5.

Learned Civil Judge (Junior Division), Batala as well as learned Addl. District Judge, Gurdaspur have correctly appreciated the evidence. There is nothing on the record that the Courts below have misread the evidence.

At the time of arguments, learned counsel for the appellant argued that actually Joginder Singh was dealing in the committees and he, after giving the committee to Gurmit Kaur, got executed mortgage deed as security. He also argued that ₹70,000/- has already been paid to Joginder Singh.

The perusal of the evidence on record shows that if the agreement of mortgage is actually taken as security for the amount of ₹70,000/-, which is given to Gurmit Kaur as committee being highest bidder, then there is no explanation as to why this second document

Ex.D2 has been got executed asking for rent of the mortgaged property @ 3% per month in lieu of the interest. This document Ex.D2 is also signed by husband of Gurmit Kaur. Otherwise also, there is no cogent evidence on record to support the defence version regarding the committees. In the agreement to sell, there is mention of payment of ₹30,000/- as earnest money and also adjusting of mortgaged amount of ₹70,000/- at the time of execution of the sale deed. The agreement to sell has been duly proved by bringing Deed Writer, Attesting witness etc. The mere denial is insufficient to rebut the evidence produced by Joginder Singh.

Learned counsel for the appellant has cited judgment passed by this High Court in ***Suresh Singla vs. Smt.Phool Pati and another, 2013(1) RCR (Civil) 503***. I have gone through this cited judgment and the same having distinguished facts will not apply in the present case. In the present case, earnest money of ₹30,000/- has already been given and agreement to sell was for ₹1,25,000/-. The mortgage deed has already been executed and interest was accrued as per Ex.D2. Learned counsel for the appellant has also cited judgment passed by the Hon'ble Supreme Court in ***Vimaleshwar Nagappa Shet vs. Noor Ahmed Sheriff and others, 2011 AIR (SC) 2057***. I have also gone through this cited judgment and the same having distinguished facts will not apply in the present case. The Civil suit in no way can be held to have been filed after a long gap of time. The sale deed was to be executed upto 31.12.1998 and the suit has been filed on 13.01.1999. Therefore, in no way, it can be held as a

long delay.

In view of the above discussion, I find that the findings given by the Courts below are correct and as per law. The concurrent findings have been given by correctly appreciating the evidence. No substantial question of law arises in this present appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

May 15, 2015
Vgulati

(INDERJIT SINGH)
JUDGE