

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.570 of 2015 (O&M)

Date of Decision: March 12, 2015

Sonika

...Appellant

Versus

Surinder Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Avtar S. Khinda, Advocate
for the appellant.

INDERJIT SINGH, J.

Appellant-defendant Sonika has filed this regular second appeal against Surinder Kumar and Ashok Kumar Chanan respondents challenging the judgment and decree dated 13.12.2011 passed by learned Civil Judge (Senior Division), Jalandhar vide which the suit for specific performance was decreed and the judgment dated 25.11.2014 passed by learned Addl. Sessions Judge, Jalandhar, vide which the appeal has been dismissed.

The brief facts of the case are that plaintiff Surinder Kumar (present respondent No.1) filed a suit for possession by way of specific performance of agreement to sell dated 19.02.2007 executed by defendant No.1 (present respondent No.2) in favour of plaintiff with regard to the house measuring 3.5 marlas as fully described in the head note or in the alternative, suit for recovery of ₹3,64,000/- double

the amount of earnest money paid to defendant No.1, at the time of execution of agreement to sell dated 19.02.2007 and suit for declaration to the effect that sale deed dated 13.07.2007 alleged to have been executed by defendant No.1 through attorney Som Raj is illegal, void, without consideration and suit for permanent injunction restraining the defendants from alienating, disposing of the property in question.

The case of plaintiff-respondent No.1 is that defendant No.1 (present respondent No.2) being owner in possession of house measuring 3.5 marlas, agreed to sell the same to plaintiff for a sum of ₹4,60,000/- vide agreement dated 19.02.2007, out of which, earnest money of ₹1,82,000/- was paid to defendant No.1 at the time of execution of agreement to sell while remaining balance sale consideration was to be paid at the time of execution of sale deed. The plaintiff always remained ready and willing to perform his part of contract. Plaintiff went to the office of Sub Registrar on 18.07.2007 and remained present there along with balance sale consideration but defendant No.1 did not turn up. It is further case of the plaintiff that defendant No.1 with malafide intention, executed power of attorney in favour of Som Raj on 10.07.2007 pertaining to disputed property. The said Som Raj executed sale deed in favour of his wife Sonika defendant No.2 (present appellant) on 13.07.2007 in connivance with each other to defeat legal rights of plaintiff.

On the other hand, defendant No.1 filed written statement on 24.09.2009 contesting the claim of the plaintiff. Later on, he filed

application on 15.06.2010 that written statement filed on 24.09.2009, does not bear his signature due to which the same is liable to be discarded. Thereafter, defendant No.1 filed written statement admitting the claim of the plaintiff by admitting that he executed one power of attorney in favour of Som Raj. However, Som Raj by cheating and mis-stating facts, got executed one sale deed in favour of his wife. Defendant No.1 mainly denied the averment that Sonika is bonafide purchaser.

At the time of arguments, learned counsel for the appellant has not argued or shown to this Court as to which evidence has been misread by the Courts below. He has failed to show as to what substantial question of law arises in this appeal. He mainly argued that the Courts below have wrongly allowed the filing of second written statement in which defendant No.1 has admitted the claim of the plaintiff in connivance with the plaintiff. Learned counsel for the appellant further argued that due to this order allowing the filing of fresh written statement by defendant No.1, defendant No.2 could not produce defendant No.1 as her witness to prove the case.

The perusal of the record shows that there is no document on record to show the payment of consideration regarding sale deed dated 13.07.2007 executed by Som Raj attorney of defendant No.1 in favour of his wife Sonika present appellant. No consideration, as argued, has been paid in the presence of Registrar nor payment has been paid through Negotiable Instrument. There is no documentary evidence on record to show that this sale consideration of the sale

deed has been paid to defendant No.1 by defendant No.2. The date for the sale deed on the basis of agreement to sell was 18.07.2007 but some days earlier i.e. on 13.07.2007, a sale deed was got executed by Som Raj attorney in favour of his wife Sonika present appellant. No cogent evidence has been led by defendant No.2 to prove her case that she is bonafide purchaser and without notice of the agreement to sell. She herself has stepped into the witness box and closed the evidence. Two jamabandis Ex.D3 and D4 have been placed on the record. In the absence of cogent evidence on record, defendant No.2 failed to prove that she is bonafide purchaser and without notice. On the other hand, plaintiff has duly proved the execution of the agreement to sell. The oral statements of the PWs have been supported by documentary evidence. Otherwise also, defendant No.1 is not contesting the execution of agreement. There is no explanation that why Som Raj attorney has executed sale deed in favour of his wife. Even, Som Raj has not been examined in the present case. At the time of service of defendant No.1 before lower Court, he was in jail and one written statement was filed when he first appeared as per the zimini order. But defendant No.1 has filed the application that written statement does not bear his signature and the Court allowed him to file fresh written statement. So, when the first written statement is not bearing signature of defendant No.1, then the averments given in the first written statement cannot be treated as rebuttal to the case of the plaintiff. Even, the defendant No.1 has not cross-examined the witnesses and he has not appeared in the witness

box to rebut the case of the plaintiff that he has not executed any agreement etc.

In view of the above discussion, I find that the judgments and decree passed by the Courts below are correct, as per law and do not require any interference from this Court. There being no substantial question of law arises in the present appeal, therefore, the same stands dismissed.

March 12, 2015
Vgulati

(INDERJIT SINGH)
JUDGE