

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.776 of 2015 (O&M)

Date of Decision: March 04, 2015

Smt.Sujinder Kaur and others

...Appellants

Versus

Kulwinder Singh Bajaj

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Saurabh Garg, Advocate
for the appellants.

INDERJIT SINGH, J.

Appellants Smt.Sujinder Kaur, Pritpal Singh and Jagdeep Singh have filed this regular second appeal against Kulwinder Singh Bajaj respondent challenging the judgment and decree dated 16.01.2012 passed by learned Civil Judge (Junior Division), Amritsar vide which the suit filed by the plaintiff-respondent was decreed and the judgment and decree dated 09.12.2014 passed by learned Addl. District Judge (A), Fast Track Court, Amritsar vide which the appeal filed by the appellants has been dismissed.

The brief facts of the case are that plaintiff-respondent Kulwinder Singh Bajaj filed a suit for possession by way of specific performance of agreement to sell against the defendants (present appellants). It is the case of the plaintiff that Surjit Singh, husband of defendant No.1 and father of defendants No.2 and 3 was owner in

possession of one immoveable suit property measuring 13 sq. yards in length and 5 sq. yards in breadth in all about 65 sq. yards vide registered sale deed dated 31.05.1971. Surjit Singh had entered into an agreement to sell the above-said suit property in favour of the plaintiff on 07.07.1999 for consideration of ₹4,75,000/-. An agreement was scribed at the instance of the parties by a regular deed writer and the agreement to sell was also got registered with the office of Sub-Registrar, Amritsar on 08.07.1999. The plaintiff paid a sum of ₹4,50,000/- to said Surjit Singh with the understanding that the balance sale consideration of ₹25,000/- will be paid by the plaintiff at the time of execution of sale deed and it was agreed that the sale deed will be got executed by the plaintiff from Surjit Singh on or before 10.07.2000. Surjit Singh expired on 22.03.2000 leaving behind his legal heirs i.e. defendant No.1 as his widow and defendants No.2 and 3 as his sons. It is further the case of the plaintiff that defendants were well aware about the deal between the plaintiff and Surjit Singh. Plaintiff approached defendants and requested them to be present in the office of Sub-Registrar, Amritsar on 10.07.2000 for execution and registration of the sale deed but the defendants did not come to the office of Sub-Registrar to execute the sale deed. On 27.03.2001, defendant No.3 executed a General Power of Attorney in favour of Amandeep Singh for execution of sale deed in favour of the plaintiff qua the share of the defendant and received a sum of ₹8,333/- out of the balance sale consideration towards his share in the same but the said Power of Attorney has been cancelled by defendant No.3 on

14.10.2002. Plaintiff also served notice upon the defendants on 30.04.2003 requiring the defendants to execute the sale deed in favour of plaintiff and to receive balance sale consideration on 08.05.2003 but the defendants refused to perform their part of the agreement. The plaintiff again remained present at the office of Sub-Registrar, Amritsar but none appeared on behalf the defendants.

The case of the defendants before the trial Court is that the property in dispute had already been mortgaged with the bank even prior to the alleged agreement dated 08.07.1999 and the plaintiff being the brother of deceased Surjit Singh had full knowledge regarding the mortgage of the said property with the bank and as such, the bank is a necessary party. It is admitted that Surjit Singh was owner of the suit property. It is denied that Surjit Singh entered into any agreement to sell. It is also denied that terms and conditions of the agreement were incorporated in the deed dated 07.07.1999. It has been alleged that said agreement is false and fabricated document. It is also stated that no amount was ever received by Surjit Singh from the plaintiff and Surjit Singh never agreed to alienate the property in dispute in favour of the plaintiff. The entire story of the plaintiff regarding his presence in the office of Sub-Registrar is a cock and bull story. It is admitted that defendant No.3 executed General Power of Attorney in favour of Amandeep Singh but denied that any amount of ₹8,333/- was received by him. It is also stated that General Power of Attorney was obtained through fraud, which has been cancelled subsequently.

The plaintiff examined PW-1 Arun Mahajan, Deed Writer, PW-2 Waryam Singh, PW-3 Joginder Singh, PW-4 Mohinderpal, Clerk O/o Sub-Registrar, PW-5 Kulwinder Singh, PW-6 Sarabjit Singh and PW-7 Sh.Rajesh Nanda, Advocate and closed the evidence.

On the other hand, defendants examined DW-1 Surinder Kaur, DW-2 Pritpal Singh, DW-3 Vipin Sharma, Clerk of PNB, DW-4 Satpal Suri, official of OBC Bank, DW-5 Ashok Kumar Maddan, Public Relation Inspector, DW-6 Sanjeev Kumar and DW-7 Deepak Chatarvedi, Inspector Custom.

At the time of arguments, learned counsel for the appellants argued that the payment of consideration has not been proved. PW-1 Arun Mahajan, Deed Writer and PW-6 Sarabjit Singh, attesting witness, nowhere stated that any payment was made in their presence. He further argued that there is delay and latches in filing the suit. He also argued that there is substantial question of law as payment of consideration has not been proved. He next contended that the First Appellate Court has not re-appreciated the evidence in detail.

After hearing learned counsel for the appellants and after going through the record, I find that the Courts have given concurrent findings of fact by appreciating the evidence produced by the parties. The agreement to sell is admittedly a registered document. The scribe as well as the attesting witness have duly proved due execution of the agreement to sell. The registration of the agreement was also duly proved by examining Clerk of Sub-Registrar. In the agreement, it

is averred regarding payment of ₹4,50,000/- as earnest money.

As there are concurrent findings of the Courts below regarding the execution of agreement to sell by predecessor of the defendants in favour of the plaintiff and further that plaintiff was ready to perform his part of the contract, these findings are on the basis of appreciation of evidence correctly and as per law. The findings given by the Courts below cannot be held as perverse nor it can be held that evidence has been misread by the Courts below. There is nothing to disbelieve the statement of PW-1 Arun Mahajan, Scribe as well as PW-6 Sarabjit Singh, attesting witness. More authenticity can be attached also on the basis of registration of the document. When the document is registered, the Registrar reads over the document to the parties and only registers the document after satisfying himself that it has been voluntarily executed.

I have also gone through the judgment passed by learned Addl. District Judge (A), Fast Track Court, Amritsar. Learned First Appellate Court has considered all the arguments raised by learned counsel for the appellants, which were addressed before that Court. In no way, it can be held that appeal has been decided without re-appreciating the evidence. The perusal of the record shows that findings of the Court below are correct, as per evidence and law and do not require any interference from this Court. The judgment and decree passed by the First Appellate Court, is also passed on the basis of evidence and with reasoning.

Learned counsel for the appellant cited the judgment

passed by the Hon'ble Supreme Court in ***Vinod Kumar vs. Gangadhar, 2015(1) SCC 391***. I have gone through this cited judgment and the same will not apply in the present case as in that case, the High Court being First Appellate Court, dismissed the appeal while observing that there is no justification to throw overboard findings recorded by trial Court. In these circumstances, the Hon'ble Supreme Court held that it is the duty of the High court to deal with all issues and evidence led by parties before recording its findings, which are not the facts in the present case. The findings have been given in detail by learned First Appellate Court.

In view of the above discussion, I find that no substantial question of law arises in the present case. Therefore, finding no merit in the present regular second appeal, the same is dismissed.

March 04, 2015
Vgulati

(INDERJIT SINGH)
JUDGE