

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Regular Second Appeal No. 89 of 2015 (O&M)

Date of decision : 21.08.2015

Jasbir Kaur

.....Appellant

Versus

Santosh Rani and another

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. A.S. Salar, Advocate
for the appellant.

LISA GILL, J.

Jasbir Kaur plaintiff-appellant has preferred this appeal impugning the judgments and decrees dated 22.12.2010 and 09.10.2014 passed by the learned Additional Civil Judge (Senior Division), Sangrur and learned Additional District Judge, Sangrur, respectively.

Plaintiff-appellant filed a suit for specific performance of the agreement to sell dated 23.07.1996 in regard to the plot/house measuring 130 square yards (5 kanal 12 marlas) allegedly executed by Mal Singh son of Gajjan Singh. As sum of ₹65,000/- was received as earnest money and the plaintiff was stated to be put in physical possession of the house. As per the terms and conditions of the agreement, she could get the sale deed executed as and when

desired on putting the vender to 20 days notice. She allegedly spent about ₹50,000/- on the renovation of the house and started residing there alongwith her family. Mal Singh died six months after the agreement. Thereupon which defendants No. 1 to 4 given up before the trial Court and not impleaded as party in this appeal threatened to dispossess her forcibly claiming to be legal heirs of Mal Singh. Legal notice dated 07.11.2000 was sent by the plaintiff through her counsel to defendants No. 2 to 5 (defendant No. 5 is also not impleaded as party in this appeal having been given up before the trial Court). Said notice was duly served upon defendants No. 2 to 4. It was returned as unclaimed qua defendant No. 5. Said defendants were asked vide this notice to come to the office of Sub Registrar Sangrur on 27.11.2000 for execution of sale deed on receiving the balance sale consideration of ₹5,000/- in terms of the agreement of sale dated 23.07.1996. Plaintiff remained present in the office of Sub Registrar on the said date alongwith balance sale consideration alongwith other necessary expenses but the defendants failed to turn up. She alleged herself to have been ready and willing to perform her part of the agreement. Defendants being legal heirs, as alleged by them, were bound to perform their part of the agreement. When they did not come forward to execute the agreement rather threatened to alienate the house in dispute, the plaintiff was constrained to file the suit for specific performance.

Defendants No. 6 and 7 i.e. respondent No. 1 Santosh Rani and respondent No. 2 - Surinder Kaur in the present appeal were impleaded as party in compliance of the order of this Court.

Said respondents claimed to be legal representatives of Mal Singh, being daughters of Mal Singh and Bhagwan Kaur @ Bhano, widow of Mal Singh who had been initially impleaded as defendant No. 5 in the suit.

Separate written statement was filed by them praying for dismissal of the suit on the grounds of lack of cause of action, locus standi of the plaintiff, mis-joinder and non-joinder of necessary parties as well as limitation. It is specifically pleaded in the written statement that no notice had ever been served upon them and the plaintiff did not even amend her plaint showing any cause of action qua them. Agreement in question was denied being a fictitious and fraudulent document and in any case being without consideration, was null and void. Plaintiff-appellant's possession over the house in question was denied. It was allegedly the present respondents, who came in possession of the said house on the demise of Mal Singh. Reliance was placed on the report of Local Commissioner appointed in a case titled, Baljit Kaur versus Bhagwan Kaur to show that the plaintiff was not in possession of the said house. Respondents No. 1 and 2 claimed to be the owners of the house in question.

In the replication filed by the plaintiff, it was averred that she had no knowledge about the relation of respondents No. 1 and 2 with Mal Singh, therefore, no notice was given to them. Notice was rightly served upon the other defendants. Defendants allegedly entered into compromise Ex. DX dated 09.04.2005 amongst themselves wherein the house in question fell to the share of Smt. Bhagwan Kaur and the present two respondents. It was averred that

no amendment in the plaint was required in the facts and circumstances of the case.

Following issues were framed by the learned trial Court:-

1. Whether the plaintiff is in possession of the suit property? OPP
2. Whether Mal Singh entered into an agreement to sell the suit land with plaintiff on 23.07.1996 and received Rs. 65,000/- as earnest money? OPP
3. Whether plaintiff was and is still ready and willing to perform his part of the contract? OPP
4. Whether plaintiff is entitled to permanent injunction prayed for? OPP
5. Whether plaintiff is entitled to specific performance of the agreement to sell dated 23.07.1996? OPP
6. Whether plaintiff is entitled to recover Rs. 65,000/- alongwith interest in the alternative? OPP
7. Whether the suit of the plaintiff is not maintainable in the present form? OPD
- 7-A Whether the agreement dated 23.07.1996 is forged, fictitious, result of forgery and do not confer any right title or interest upon the plaintiff? OPD
- 7-B Whether suit is bad for non-joinder and mis-joinder of the necessary parties? OPD
8. Whether suit is barred by limitation? OPD
9. Whether plaintiff has no cause of action, locus standi to file the present suit? OPD
10. Relief.

On consideration of the facts and circumstances and the evidence on record, learned trial Court dismissed the suit. Appeal preferred by the plaintiff-appellant was also dismissed by the learned Additional Sessions Judge, Sangrur vide impugned judgment dated 09.10.2014. Aggrieved therefrom present appeal has been preferred.

Learned counsel for the appellant vehemently argues that both the learned courts below have grossly erred in dismissing the appellant's suit primarily on the ground that she was unable to prove passing of consideration of ₹65,000/-. It is submitted that testimony of PW2 Roop Singh son of Balbir Singh one of the attesting witness of the agreement has been wrongly ignored. This witness has specifically stated that ₹65,000/- was received by Mal Singh after agreement dated 23.07.1996 was reduced into writing. Testimony of this witness has been wrongly ignored by the courts below. It is proved that ₹65,000/- had indeed been received by Mal Singh as consideration of the property in question. Furthermore, plaintiff was in possession of the suit property, which was proved by her statement. Most of the consideration amount is proved to have been passed to the vendor and the vendee was put in possession of the property. Thus, the impugned judgments and decrees are clearly unsustainable and deserve to be set aside.

I have heard learned counsel for the appellant and gone through the file as well as the record, which is produced in Court today.

It is a matter of record that defendants No. 1 to 5 were given up by the plaintiff and not proceeded against. Defendant No. 2 Harbans Kaur is stated to be wife of Mal Singh where as defendants Baljit Kaur and Angrej Kaur were stated to be the daughters of Mal Singh. Defendant No. 5 is Bhagwan Kaur @ Bhano again stated to be widow of Mal Singh. She is the mother of defendant-respondents Santosh Rani and Surinder Kaur. Bhagwan Kaur has also not been

proceeded against by the plaintiff-appellant.

Specific case of the respondent-defendant Santosh Rani and Surinder Kaur is that the deceased Mal Singh used to live with them and their mother Bhagwan Kaur @ Bhano. After his death, property devolved upon them being his legal heirs and thereafter they are in possession of the suit property. Present respondents were impleaded on the direction of this Court, however, the plaint was never amended neither are there any averments against the said respondents. It is in the replication that plaintiff submits that she had no knowledge about relations of the present respondents or their mother with deceased Mal Singh. It is only on the basis of a settlement arrived at between all the defendant-respondents that the property in dispute fell in the share of present respondents and their mother. All other defendants were given up before the trial Court.

In order to prove the execution of agreement dated 23.07.1996, PW 2 Roop Singh, PW5 Lokhu Ram and PW6 Dr. Inderjit Singh as well as the plaintiff herself as PW3 have stepped into the witness box. Much stress has been led on the testimony of Roop Singh one of the alleged marginal witnesses. In the cross examination, he has admitted that the consideration of ₹65,000/- did not pass in his presence. He stated that payment had been made before he came. No money transaction took place in his presence. He has also contradicted plaintiff-appellant PW3 by saying that after execution of the agreement they appeared before the office of Sub Registrar for its attestation. Plaintiff-appellant has stated to the contrary and admittedly agreement is not attested by the Sub

Registrar. Neither the scribe nor the other witnesses of the agreement to sell namely, Gian Chand and Deva Singh have been examined. Jagan Nath, Deed Writer i.e. the alleged scribe of the agreement to sell has also not been examined. In fact PW2 Roop Singh has proceeded to say that he did not even know who Jagan Nath was.

It has come on to the record that plaintiff - Jasbir Kaur is a household lady and there is no evidence to show the source of obtaining ₹65,000/- in the year 1996. Plaintiff has not brought on record any evidence to show the source of the said money though there is mention of borrowing the money from one Kulwant Singh. Said Kulwant Singh has not been examined.

Plaintiff-appellant has further been unable to prove her possession over the demised property. Except her own bald statement there is no evidence to prove her possession. It has been rightly held by the First Appellate Court that if possession had been so delivered at the time of agreement of sell then this document was to be compulsorily registered.

Similarly no benefit can accrue to the plaintiff-appellant on the ground of defendants having failed to prove the agreement to sell to be a forged and fabricated document. Failure to prove it to be so does not lead to a presumption of genuineness of the said agreement. It has been rightly held that execution of this agreement to sell is to be proved by the plaintiff by leading cogent and convincing evidence on record. Plaintiff's case has to stand on its own legs and cannot draw any benefit from the weakness of the case

set up by the defendants.

Learned counsel for the appellant is unable to point out any question of law much less substantial question of law which may be involved for consideration of this Court in this regular second appeal. Both the courts below have returned concurrent findings of fact against the plaintiff-appellant which are based on proper appreciation of the evidence on record. No material evidence has been ignored or misread.

Consequently, I do not find any infirmity, illegality or perversity in the judgments and decrees dated 22.12.2010 and 09.10.2014 passed by the learned Additional Civil Judge (Senior Division), Sangrur and learned Additional District Judge, Sangrur, respectively.

Consequently, this appeal is dismissed.

August 21, 2015
rts

(Lisa Gill)
Judge