

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 4963 of 2014 (O&M)
Date of decision : January 20, 2015

Jagjit Singh

..... Appellant

Versus

Charandev Singh and another

..... Respondents

RSA No. 4823 of 2014 (O&M)

Ranjit Kaur

..... Appellant

Versus

Charandev Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arvind Kashyap, Advocate
for the appellant in RSA No. 4963 of 2014.

Mr. Jasbir Rattan, Advocate
for the appellant in RSA No. 4823 of 2014.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

CM No.11698-C of 2014 in RSA No. 4963 of 2014

This is an application under Section 151 CPC seeking condonation of delay in refiling the appeal.

For the reasons stated in the application, which is duly supported by an affidavit application is allowed. Delay of 8 days in filing RSA No.4963 of 2014 in refiling the appeal is condoned.

CM No. 11331-C of 2014 in RSA No.4823 of 2014

This is an application under Section 149 CPC seeking permission to make good the deficiency in court fee.

C.M.is allowed.

Permission granted to make the deficiency in court fee good.

RSA Nos. 4963 and 4823 of 2014

This order of mine shall dispose of both the appeals.

The Regular Second Appeal No.4963 of 2014 has been filed by appellant-defendant No.2-Jagjit Singh who is alleged to have set up an agreement to sell dated 20.4.1998 i.e. prior to the agreement to sell dated 7.12.1998 executed between defendant No.1-Ranjit Kaur and plaintiff Charandev Singh. RSA No. 4823 of 2014 has been filed by defendant No.1-Ranjit Kaur against the plaintiff. In this appeal, civil suit was filed by Charandev Singh against defendant Nos. 1 and 2-Ranjit Kaur and Jagjit Singh. The respondent-plaintiff sought specific performance of agreement to sell dated 7.12.1998 in respect of land measuring 14 Bighas 5 biswas in the suit. The details of which have been given in the suit (hereinafter called the suit property) against earnest money of ₹1,50,000/-. The respondent-plaintiff alleged that possession of the property was handed over to him. The target date for the execution and registration of the sale deed was fixed as 6.12.2001. The agreement to sell was witnessed by Pirthi Singh and Lakhbir Singh and the agreement to sell was stated to have written by Deed writer Darbara Singh Pandher. The purchase of the stamp papers has also been

witnessed by the testimony of PW-4 Rajender Pal Singla. The agreement to sell, as per pleadings set up by the plaintiff, was also thumb marked by Nasib Kaur mother of Ranjit Kaur. During the pendency of the suit defendant No.2-Jagjit Singh had also filed a civil suit No.450 of 2003 titled as Jagjit Singh Vs. Ranjit Kaur whereby he sought specific performance of the agreement to sell dated 20.4.1998.

Both the suits were consolidated by the trial court. After consolidation defendant No.2-Jagjit Singh was proceeded against ex-parte in the civil suit titled as Charandev Vs. Ranjit Kaur whereas civil suit No.450 of 2003 titled as Jagjit Singh Vs. Ranjit Kaur was dismissed for default. The respondent-plaintiff in support of the averments made in the plaint as well as in order to comply with the provisions of Section 16(c) of the Specific Relief Act examined PW-2-Darbara Singh Pandher, deed writer, Pirthi Singh, witness to the agreement to sell, PW-4 Stamp vendor-Rajinder Pal Singla. It is a matter of record that Ranjit Kaur did not step into the witness box but only her attorney who is alleged to have been given authority on 8.6.2009 appeared in the witness box. The trial court on the basis of the aforementioned evidence decreed the suit of the respondent-plaintiff and directed defendant No.1-Ranjit Kaur to execute the sale deed in favour of the plaintiff failing which the plaintiff shall be given a right to get the sale deed executed through the process of the court.

It would not be out of place to mention here that on the basis of the pleadings between the parties particularly of the defendant No.2-appellant in RSA No.4963 of 2014, the trial court

framed issued No.6. For the sake of brevity issued No.6 is extracted hereunder:-

“Whether the agreement to sell dated 20.4.1998 is fake and forged document?OPP”

and onus of the same, according to the trial court was placed on OPP.

The trial court while decreeing the suit rendered a finding on issue No.6 against the respondent-plaintiff.

Aggrieved against the aforementioned judgment and decree of the trial court three appeals were filed one by Charandev-plaintiff against the finding on issue No.6, second by Jagjit Singh against the judgment and decree passed in civil suit titled as Jagjit Singh Vs. Charandev Singh and third by Ranjit Kaur. The lower appellate court on the basis of the evidence and record, being the last court of fact and law which is enjoined upon an obligation to discuss both oral and documentary evidence allowed the appeal filed by Charandev Singh by holding that onus on issue No.6 ought not to have been placed on the plaintiff and the burden of the same should have been placed upon defendant No.2. While rendering the aforementioned finding the lower appellate court referred to the pleadings between the parties to the *lis* rest of appeals i.e.appeal filed by Jagjit Singh and Ranjit Kaur were dismissed.

It is the judgment and decree of both the courts below Jagjit Singh and Ranjit Kaur have filed aforementioned two appeals.

Mr. Arvind Kashyap, learned counsel appearing in RSA No. 4963 of 2014 filed by Jagjit Singh has submitted that the lower appellate court has committed illegality and perversity in setting aside the finding of the trial court on issue No.6. Even assuming for argument sake the burden had been on the appellant-defendant No.2. I am afraid, the aforementioned argument of the learned counsel Mr. Arvind Kashyap sans, merits, for, on going through the pleadings i.e. pleadings filed by Charandev no declaration has been sought for, in respect of agreement to sell dated 20.4.1998. It is only in the written statement defendant No.2 set up a plea that the agreement to sell dated 20.4.1998 was propounded by defendant No.2, which according to defendant No.2 was allegedly executed in favour of Ranjit Kaur-appellant herein. Since the appellant-defendant No.2 had performed the agreement to sell and there was no declaration sought by the plaintiff in respect of agreement to sell dated 20.4.1998 though in the pleadings the respondent-plaintiff had mentioned about the agreement to sell. The finding rendered by the lower appellate court is based on appreciation of fact and law, is in accordance with law as it is only defendant No.2, who had set up/propounded the agreement in the written statement, obviously the burden of proof, much less onus i.e. of issue No.6 should have been placed on the shoulders of defendant No.2. He further states that both plaintiff and defendant No.1 are co-related to each one, and therefore the agreement to sell is nothing but to defeat the rights of the appellant-defendant.

Mr. Jasbir Rattan, learned counsel appearing on

behalf of the defendant No.1-vendor in RSA No. 4823 of 2014 has contended that description of property was conspicuously absent in the agreement to sell and only three khasra numbers were mentioned. i.e. Khasra Nos.547/4-2, 548/3-18 and 549/6-5 and therefore the decree which has been sought, though is in respect of land measuring 14 Bighas and 5 biswas but however, respondent-plaintiff has mentioned certain other khasra numbers and therefore the decree of the trial court as well as lower appellate court is liable to be set aside.

Learned counsel for the appellant in RSA No. 4823 of 2014 has submitted that Jagjit Singh had moved an application seeking restoration of civil suit No.450 of 2003 and the application is pending.

I have heard the learned counsel for the parties and appraised the impugned judgments and decrees of the courts below.

I am afraid the foremost contention of the learned counsel for the appellant in RSA No. 4823 of 2014 that the description of the property was not given in the agreement to sell is devoid of merit for the reasons that the trial court while dealing with the aforementioned contention relied upon the judgment of this Court in **Bachan Singh (deceased) through his L.Rs Vs. Gursharan Singh and others 2009 (3) PLR 559** wherein it has been held that where the agreement to sell does not describe the land properly, it would not render it to be a suspicious document if other attending circumstances conclusively point to the execution of the same and in such an eventuality, all the factors have to be considered in their

totality to conclude that the agreement was a valid document or not. The agreement to sell did not mention about three khasra numbers i.e. 547/4-2, 548/3-18 and 549/6-5 measuring 14 bighas 5 biswas. The aforementioned khasra numbers mentioned in the suit and contained in the decree are in respect of remaining piece of land out of which these khasra numbers are part of the aforementioned remaining khasra numbers i.e. 79 bighas 1 biswa. The respondent-plaintiff has proved the readiness and willingness, in as much as affidavit marking the presence before the Sub Registrar has been proved on record as Ex. P-2 dated 6.12.2001. Even the execution of the agreement has also been proved by the respondent as the register of the stamp vendor at S.No.828 bore signatures of the defendant. Once the signatures were found on the register of the deed writer there was no occasion for the defendant to come out with a plea by denying the execution of the agreement to sell. Ranjit Kaur-appellant in RSA No. 4823 of 2014 did not appear before the authority before whom the sale deed was to be executed and registered therefore defendant No.1 was lacking in performing her part of the agreement.

The respondent-plaintiff in his examination-in-chief reiterated the averment made in the plaint, however defendant No.2 was proceeded against ex-parte therefore the statement in examination-in-chief is deemed to be admitted as held in **Mahant Mela Ram Vs. Shiromani Gurudwara Prabhandak committee AIR 1992 P&H 252.**

Both the Courts below have rendered a finding of fact based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned orders of the courts below.

No substantial question of law arise for determination by this Court.

It is made clear that even the agreement to sell between the parties would be confined to khasra Nos. 547/4-2, 548/3-18 and 549/6-5 and in respect of 14 Bighas and 5 biswas.

Accordingly, both the appeals are dismissed.

There shall be no order as to costs.

(AMIT RAWAL)
JUDGE

January 20, 2015
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