

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 5911 of 2014
Date of decision : October 1, 2015

Gurshinder Kaur

..... Appellant

Versus

Jasbir Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. K. S. Chahal, Advocate
for the appellant.

Mr. Rahul Sharma, Advocate
for the respondents.

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. 14059-C 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, delay of 26 days in refiling the appeal is condoned.

The application stands disposed of.

RSA No. 5911 of 2014

The challenge in the present appeal is to impugn the judgment and decree of both the courts below, whereby, the suit qua specific performance of the agreement to sell dated 8.4.2008 has been declined and the respondents-defendants have been ordered to refund a sum of ₹4 lacs along with 9% interest per annum.

Mr. K. S. Chahal, learned counsel for the appellant-plaintiff submits, that the total land was measuring 3 Kanals 5 Marlas. Gurmail Kaur (since deceased) and Harbans Kaur were/are owners of the property to the extent of half share. No doubt, that Gurmail Kaur died on 9.2.2008. Her entire share, after her death had devolved upon Harbans Kaur, being daughter. Therefore, it cannot be said to be a fallacy.

He further submits that there was no agreement to sell but only a sale deed was drafted which was to be attested before the Registrar for registration. However, Harbans Kaur did not appear before the office of Sub Registrar and slipped away. A sum of Rs. ₹7,35,000/- had been paid as earnest money. Both the courts below have committed illegality and perversity in not exercising the discretion under Section 20 of the Specific Relief Act, 1963 viz-a-viz share of Harbans Kaur, assuming, that on the date of alleged sale deed/agreement to sell Gurmail Kaur had died, thus, submits that the appeal involves a substantial question of law to be determined by this Court.

Mr. Rahul Sharma, learned counsel appearing on

behalf of the respondent submits that the appellant in cross examination had admitted that preceding to the draft sale deed there was a written agreement to sell, drafted at her residence, but she did not bring it on the adjourned date, which she agreed, and came out with a different stand that no written agreement to sell had been drafted.

It is also a matter of record that Harbans Kaur was brought up in West Bengal and studied in Calcutta and she know only English and Bengali, whereas, the draft sale deed is in regional language i.e. Punjabi, therefore, she was not conversant to Punjabi language, thus, there is no illegality and perversity in the finding rendered by both the courts below, much less, no substantial question of law arise.

I have heard learned counsel for the parties and appraised the paper book.

The lower appellate court, being the last court of fact and law found that the appellant admitted, that the contents of the sale deed were read over to Harbans Kaur. There is no separate receipt of alleged amount of ₹7,35,000/-. The lower appellate court, on the basis of oral and documentary evidence found that a sum of ₹4 lacs had been paid. Rightly so, it has been ordered to be refunded. The suit was not maintainable as Gurmail Kaur had died on 9.2.2008, therefore, the drafted sale deed viz-a-viz the entire land could not have been prepared/executed by Harbans Kaur in absence of any mutation of entire share in her favour.

There is also a candid admission of the appellant

that preceding to the agreement to sell, there was written agreement to sell, when she was asked to bring the same, she sought adjournment, therefore, she did not prove the same. The relevant portion of the same is extracted hereinbelow:-

“Appellant herself admitted in her cross-examination that there was a written agreement between the parties prior to the scribing of the sale deed and that too executed in her house and she herself purchased the stamp papers and she is in possession of the same, but when she was directed to produce the said agreement and cross-examination was deferred and on the next date, she did not bring the said agreement in the Court rather put a different story that there was no written agreement rather it was oral agreed between the parties that too on the day of scribing the sale deed. In this way the appellant herself resiled from her earlier statement and stated that the previous statement made by her is a false statement. So, in these circumstances, a person who himself has not come to the court with clean hands, is not entitled to the discretionary relief of specific performance.”

In view of the aforementioned observations, I do not find any illegality or perversity in the aforementioned judgments and decrees of the courts below.

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

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 1 , 2015
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