

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 5314 of 2015

Date of Decision: 12.02.2016

Balwinder Kaur and Another

... Petitioner(s)

Versus

Ravail Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Nand Lal Sammi, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution of India for setting order dated 10.7.2015, passed by learned Additional District Judge, Patiala, whereby appeal filed by the petitioner was dismissed and also for setting aside the order dated 20.5.2014, passed by learned Civil Judge (Junior Division), Rajpura, whereby application under Order 39 Rules 1 & 2 CPC, filed by the respondent, was allowed.

Relevant facts of the case that respondent had filed main suit for declaration that sale deed dated 17.6.2010, executed by defendant No.3 in favour of defendants No.1 & 2, for sale consideration of ₹ 5,31,000/- is liable to be set aside and mutation sanctioned on the basis of said sale deed is also liable to be set aside.

Plaintiff has sought relief of permanent injunction and on the basis of application under Order 39 Rules 1 & 2 CPC read with Section 151 CPC, prayer was made for ad interim injunction. The Court of first instance, after considering the submissions made by learned counsel for the parties, observed that there was a prima facie case in favour of the plaintiff and in case no injunction was issued, applicant/plaintiff would be put to suffer an irreparable loss. Present petitioners filed an appeal before the First Appellate Court and the said appeal was dismissed.

Learned counsel for the petitioners mainly submitted that petitioners are the bonafide purchasers and the Courts have not considered their submissions in the correct perspective. The disputed point is whether payment was made or not. Learned counsel for the petitioners also submitted that they had purchased the property and defendant No.3 was duly authorized on the basis of general power of attorney as having been given by the plaintiff. The sale was on the basis of registered sale deed and for consideration of ₹ 5,31,000/-. The payment was made before the Sub Registrar. In fact the dispute is of money and share of property in between the plaintiff and defendant No.3, whereas present petitioners are bonafide purchasers. Actual physical possession was also delivered at the time of execution of the sale deed. But the Courts below have not appreciated the real controversy which resulted into erroneous findings while disposal of application for ad interim injunction and the orders passed by both the Courts below are liable to be set aside.

There is no representation on behalf of the respondent despite service.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that both the Courts below have already appreciated the controversy which is short and simple. The registered sale deed was executed by defendant No.3 on the basis of general power of attorney having been executed by

the plaintiff. It is the version of the plaintiff that defendant No.3 was not authorized to alienate the suit property and even the sale was without the knowledge of the plaintiff and the sale proceeds was not deposited in the account of plaintiff. On that dispute, even FIR was got recorded against Kashmir Singh, defendant No.3. It shall be matter of evidence, which is to be led before the Court below, whether the attorney holder was within his powers to execute the sale deed in favour of defendants No.1 & 2 and whether any payment was actually made to the plaintiff by the attorney holder. The Court below, while exercising the judicial discretion vested in it, passed order thereby restraining the defendants from alienating and changing the nature of the suit land till the decision of the suit and the said order was affirmed by the First Appellate Court.

There is absolutely no reason to interfere in the orders under challenge by way of present petition and the same stands dismissed.

(Shekher Dhawan)
Judge

February 12, 2016

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