

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.7698 of 2015

Date of decision : 29.04.2016

Usha Rani

...Petitioner

Versus

Sunil Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Veneet Sharma, Advocate for the petitioner.

Mr. Sudeep Mahajan, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The petitioner-defendant is aggrieved of the impugned order dated 07.10.2015, whereby in a suit for possession by way of specific performance of agreement to sell dated 25.09.2009, with following averments in plaint and written statement:-

“It is pertinent to mention over here that prior to the signatures on blank documents by the defendant on 25.9.2009 as a surety document for the loan for an amount of Rs.1 lacs from the plaintiff by the husband of the defendant, other surety paper in the form of an agreement to sell was scribed and was also got signed and thumb

marked from the defendant by the plaintiff in the name of his son namely Tarun Jain. The said papers were got signed by the plaintiff from the defendant in her home. In fact, on earlier occasion also i.e. on 27.9.2007, the husband of the defendant who owed Rs.50,000/- to the plaintiff being committee money and the husband of the defendant also took another Rs.50,000/- from the plaintiff, the plaintiff got signed the said agreement to sell from the defendant at her home in the name of his son Tarun Jain and also got her thumb impression marked on the documents as well as on the register of document writer namely Vijay Sancher. This fact though was in the knowledge of the defendant at the time of filing the written statement but at that time, the defendant was not in possession of any photo copy or certified copy of the said document. During the trial of the present case, the defendant enquired and contacted the said Shri Vijay Sancher and obtained the certified copy of the said document dated 27.9.2007 entered between the defendant and the son of the plaintiff. The agreement to sell dated 27.9.2007 executed between the defendant and the son of the plaintiff was infact a surety document and was never intended to be executed as it was only in lieu of the amount due towards the husband of the defendant by the plaintiff. The plaintiff is in the habit of making such type of documents from his borrowers and he also used the same tactics in this case to grab the property of the defendant by forging the agreement to sell dated 25.9.2009. It is cardinal principle of law that no specific performance can be granted on any document i.e. agreement to sell which was intended to be executed as surety document and in actual is not an agreement to sell. Moreover, the defendant signed and thumb marked the blank stamp papers for the

loan taken by the husband of the defendant from the plaintiff to the tune of Rs.1 lac which he has got fabricated into the agreement to sell dated 25.9.2009 in connivance with the witnesses and the deed writer.

Para No.3 of the written statement:-

It is pertinent to mention over here that prior to the signatures on blank documents by the defendant on 25.9.2009 as a surety document for the loan for an amount of Rs.1 lacs from the plaintiff by the husband of the defendant, other surety paper in the form of an agreement to sell was scribed and was also got signed and thumb marked from the defendant by the plaintiff in the name of his son namely Tarun Jain. The said papers were got signed by the plaintiff from the defendant in her home Infact, on earlier occasion also i.e on 27.9.2007, the husband of the defendant who owed Rs.50,000/- to the plaintiff being committee money and the husband of the defendant also took another Rs.50,000/- from the plaintiff, the plaintiff got signed the said agreement to sell from the defendant at her home in the name of his son Tarun Jain and also got her thumb impression marked on the documents as well as on the register of document writer namely Vijay Sancher. This fact though was in the knowledge of the document at the time of filing the written statement but at that time, the defendant was not in possession of any photo copy or certified copy of the said document. During the trial of the present case, the defendant enquired and contacted the said Shri Vijay Sancher and obtained the certified copy of the said document dated 27.9.2007 entered between the defendant and the son of the plaintiff. The agreement to sell dated 27.9.2007 executed between the defendant and the son of the plaintiff was infact a surety document and was never

intended to be executed as it was only in lieu of the amount due towards the husband of the defendant by the plaintiff. The plaintiff is in the habit of making such type of documents from his borrowers and he also used the same tactics in this case to grab the property of the defendant by forging the agreement to sell dated 25.9.2009. It is cardinal principle of law that no specific performance can be granted on any document i.e. agreement to sell which was intended to be executed as surety document and in actual is not an agreement to sell. Moreover, the defendant signed and thumb marked the blank stamp papers for the loan taken by the husband of the defendant from the plaintiff to the tune of Rs.1 lac which he has got fabricated into the agreement to sell dated 25.9.2009 in connivance with the witnesses and the deed writer. It is also pertinent to mention over here that the due date for execution of the sale deed as per the contents of the agreement to sell dated 27.9.2007 and 29.9.2009 which was otherwise never intended to be performed by the parties. The plaintiff approached the husband of the defendant and told him that the amount of Rs.1 lacs is still due from him and the validity of the document dated 27.9.2007 is going to end on 29.9.2009 so he pressurized the husband of the defendant to sign and thumb mark the blank documents. The said blank documents/stamp papers were turned into agreement to sell dated 25.9.2009 by the plaintiff in connivance with the witnesses and the deed writer. It is further stated that the son of the plaintiff namely Tarun Jain is not an income tax payee and as such the plaintiff knew that in case of suit for specific performance on the basis of agreement to sell dated 27.9.2007, his son will not be in a capacity to show the amount of the sale deed in blank and white and as such when the time of the said agreement to sell dated 27.9.2007

came to end just two days prior to the said date, he got another blank paper signed and thumb marked from the defendant and converted the said blank papers into an agreement to sell in his own name as his intentions were bad from the very beginning and he in a very clever manner turned the said blank documents into agreement to sell in his own name as he is in income tax payee and he filled the lacuna of showing the money in black and white during the trial of the case. This clearly shows the malafide on the part of the plaintiff to grab the property of the defendant. The agreement to sell in dispute is infact was a blank document and there was no intention on the part of the parties to implement the same and the specific performance cannot be granted in favour of the plaintiff.”

Mr. Veneet Sharma, learned counsel appearing on behalf of petitioner submits that in the unamended written statement, agreement to sell was specifically denied and stated that it was a loan transaction. However it transpired that there is another agreement to sell dated 27.09.2007 executed by the son of respondent. The aforementioned fact would help the Court in adjudication of the lis as it does not amount to withdrawal of the admission but it is elucidative and explanatory in nature. Application moved at the stage when the suit was slated for defendant's evidence and even respondents have right to examine witnesses in this regard.

Mr. Sudeep Mahajan, learned counsel appearing on behalf of respondent-plaintiff submits that amendment at the later stage cannot be permitted in view of the amendment in the provision of Order 6 Rule 1 and the application is moved in order to prolong the adjudication of the trial,

much less, adoption of dilatory tactics. Plea taken is not permissible in law as it would tantamount to withdrawal of admission.

I have heard learned counsel for the parties and appraised the paper book and of the view that amendment sought to be incorporated does not tantamount to withdrawal of admission but it is elucidative and explanatory in nature. Respondent shall have a right to examine the witnesses as the suit is at the stage of defendant's evidence. However, aforementioned amendment is allowed, subject to payment of cost of Rs.10,000/- to be paid to the counsel for the respondent in the High Court. Respondents are granted permission to file replication to the amended written statement.

Accordingly, impugned order is set aside.

Application for amendment is allowed.

Revision petition stands allowed.

29.04.2016

pawan

**(AMIT RAWAL)
JUDGE**