

206

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4635-2012 (O&M)

Date of decision : 25.04.2016

Sarjeet Kaur

... Appellant

Versus

Mukhtiar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kulwant Singh, Advocate
for the appellant.

Mr. Nonish Kumar, Advocate
for respondent Nos.2 to 4.

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.12905-C of 2012

For the reasons stated in the application, which is duly supported by an affidavit, delay of 106 days in refiling the present appeal is condoned.

Application is allowed.

Main Case

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby the suit claiming declaration and consequential relief of permanent injunction setting aside of the sale deed dated 14.03.2006 has been dismissed by both the Courts below.

Mr. Kulwant Singh, learned counsel appearing on behalf of the

appellant-plaintiff submits that Sarjeet Kaur daughter of Balkar Singh had executed a registered power of attorney (Ex.D-1) dated 07.10.1988 in favour of the Mukhtiar Singh-defendant, who is none-else, but brother. The holding of the total land at the hands of Balkar Singh was 151 kanals 18 marlas, but the share of Sarjeet Kaur is 30 kanals 17 marlas. On 14.03.2006 on the basis of the power derived from the GPA defendant No.1 executed the sale deed in favour of the son and grand-sons i.e. defendant Nos.2 to 4 without passing consideration. In these circumstances, the suit was filed on 12.07.2006. The defendant in cross-examination admitted that Sarjeet Kaur-plaintiff had no intention to sell the land at the time of the execution of GPA, though the during the entire period the land was cultivated by Mukhtiar Singh and he was paying batai to the appellant-plaintiff. Yet, the Courts below declined the relief, while arriving at conclusion that the plaintiff is entitled to recover Rs.15,17,500/-. Against the aforementioned findings, two appeals were filed and both have been dismissed, whereas the present regular second appeal is at the instance of only Sarjeet Kaur, thus, urges this Court to formulate the substantial questions of law as drawn in the memorandum of appeal.

Mr. Nonish Kumar, learned counsel appearing on behalf of the respondent Nos.2 to 4, submits that in pursuance to the judgment and decree passed by the trial Court, sale consideration as mentioned in the sale deed along with interest @ 12% has been deposited in the concerned Treasury. The plaintiff has miserably failed to discharge ingredients of Order 6 Rule 4 CPC, much less, witness of GPA to show the intention. Both the Courts below have rendered findings of fact based upon the appreciation of oral and documentary evidence and no substantial question of law arises for determination and urges this Court for affirming the findings, under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view there is no force in the plea of Mr. Kulwant Singh, for the reason that the plaintiff has miserably failed to discharge the onus as enshrined in Section 101 of the Indian Evidence Act. No explanation has come forth in examining the attesting witnesses of the GPA to prove whether the Sarjeet Kaur had actually executed the GPA with the intention to manage the property and clause of alienation could not have been pressed into service. Both the Courts below have, in my view, rendered a justice in favour of the appellant-plaintiff by removing the “chaff from grain” ordering for deposit of the entire sale consideration as the respondent-defendant miserably failed to prove the payment of the sale consideration yet to be in respect of the son and grand-sons. Mere one line in the examination cannot be read in isolation to form an different opinion than arrived at. It is a settled law that the entire evidence has to be seen and looked into. Mukhtiar Singh had not been a defaulter in payment of batai to the appellant-plaintiff during the period, he remained in cultivating possession.

Keeping in view the aforementioned facts and circumstance of the case, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination.

With the aforesaid observations, the appeal stands dismissed on merits and as well as on the grounds of court fee deficiency.

25.04.2016
yogesh

(AMIT RAWAL)
JUDGE