

RSA No. 4435 of 2013 (O/M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 4435 of 2013 (O/M)
Date of decision : 25.4.2016

Mohinder Singh Appellant

Versus

Malvinder Singh and others Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Ms. Neeti Gupta, Advocate, for the appellant.

Mr. D. Sharma, Advocate, for respondent No. 3.

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

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KULDIP SINGH, J.

Impugned in the present regular second appeal is the order dated 1.6.2013, passed by the learned Additional District Judge, Chandigarh, affirming the judgment and decree dated 30.11.2009, passed by the learned Civil Judge (Junior Division), Chandigarh, and also at the same time, reversing the findings on issue No. 1-A, framed on 5.2.2008, and decided the same in favour of Ajaib Kaur. Ajaib Kaur had filed a separate appeal (Civil Appeal

RSA No. 4435 of 2013 (O/M)

-2-

No. 99 of 5.3.2010), whereas Mohinder Singh and Shashi Singla had also filed an appeal (Civil Appeal No. RBT No. 18 of 11.3.2010/7.1.2011) before the first appellate Court against the judgment and decree dated 30.11.2009, passed by the learned Civil Judge (Junior Division), Chandigarh.

The brief facts of the case are that Mohinder Singh and Shashi Singla (plaintiffs) had filed a civil suit bearing No. 43 of 5.3.1993 for specific performance of contract by way of possession of agreement to sell dated 28.1.1990. In short, the plaintiffs claim that SCF No. 97, Sector-35-C, Chandigarh, was allotted on lease hold basis by Chandigarh Administration to Ms. Jagdish Kaur, daughter of Shri Ajmer Singh, resident of House No. 129, Sector-18-A, Chandigarh, and Kamaljit Singh Thandi in equal shares, vide allotment letter No. 3459/CPL-2542 dated 25.4.1974. The possession of the said site was delivered to them on 19.7.1975. Kamaljit Singh Thandi (defendant No. 1) executed a relinquishment deed dated 12.12.1977 and got it registered in the office of Sub Registrar, Chandigarh, on 17.12.1977, vide which he relinquished his half share in the said site in favour of Smt. Jagdish Kaur. It is further alleged that Jagdish Kaur, vide agreement of sale dated 28.1.1990, agreed to sell the entire SCF No. 97, Sector-35-C, Chandigarh, to the plaintiffs. The sale price was fixed at Rs. 6 lacs.

RSA No. 4435 of 2013 (O/M)

-3-

Rs. 20,000/- were paid as earnest money. The last date for execution and registration of the sale deed was fixed on or before 28.7.1991. The possession of the said SCF was to be delivered at the time of execution of the sale deed. It is alleged that Kamaljit Singh Thandi (defendant No. 4), on coming to know about execution of agreement to sell dated 28.1.1990, filed a civil suit against Jagdish Kaur (defendant No. 2) and the Chandigarh Administration for declaration to the effect that he was owner to the extent of half share in the said site. He also sought permanent injunction, restraining Chandigarh Administration from acting on the basis of relinquishment deed. It was claimed by the plaintiffs that they have always been ready and willing to perform their part of the contract and to pay the balance consideration of Rs. 5,80,000/-. Since Jagdish Kaur did not execute the sale deed, hence, the present suit was filed by the plaintiffs on 5.3.1993.

It comes out that Jagdish Kaur had died on 3.2.1992. Therefore, her mother Ajaib Kaur as well as Sadhu Singh Hira, husband of Jagdish Kaur, from whom she was living separately, were brought on record.

Defendant No. 1, Ajaib Kaur, in the written statement claimed that the agreement to sell dated 28.1.1990 is fake and sham document. Jagdish Kaur had let out the property to U.P. Handloom.

RSA No. 4435 of 2013 (O/M)

-4-

Before her death on 3.2.1992, the property was vacated and possession was handed over to Ms. Pritam Kaur. The possession of premises remained with her under lock and key till the death of Jagdish Kaur and from her, the forcible possession was taken by the plaintiffs in connivance with the local police. The filing of Civil Suit No. 359 dated 14.2.1990 by Kamaljit Singh Thandi against Jagdish Kaur and others was not denied. It was stated in the said suit that the learned Sub Judge passed the order, directing Jagdish Kaur (deceased) and Daljit Kaur to maintain status quo regarding the suit property till further orders. It was stated that plaintiff No. 1 came in contact with Jagdish Kaur and wanted to help her in the litigation and suggested that agreement to sell dated 28.1.1990 be prepared and used against Kamaljit Singh Thandi. The plaintiffs also got the power of attorney dated 26.6.1991 and the lease deed dated 9.10.1991. All these documents are sham and without consideration. Jagdish Kaur was not keeping good health and on the assurance of plaintiff No. 1, she executed fake documents to contest the civil suit filed by Kamaljit Singh Thandi. In order to show his bonafide, plaintiff No. 1 also gave the declaration/undertaking on 5.11.1991 that he will not misuse the said documents or use or take any benefit of the said documents in any manner whatsoever. Plaintiff No. 1 also admitted that the said property shall remain under

physical possession and ownership of Jagdish Kaur and that he shall not have any right, claim, interest or title over the said property. The said plaintiff further declared that he has not paid anything to Smt. Jagdish Kaur. However, taking undue advantage of the helplessness of Jagdish Kaur, plaintiff No. 1 lodged an FIR dated 24.12.1992 and took forcible possession of the said SCF with the help of local police. It is stated that defendant No. 1, being mother of Jagdish Kaur, had succeeded her on the basis of the Will dated 3.11.1991. It is further stated that Ajaib Kaur also died and executed a will dated 13.10.1993. Sadhu Singh Hira had no concern with Jagdish Kaur.

Sadhu Singh (defendant No. 2) in the written statement also took the plea that agreement to sell dated 28.1.1990 was not executed by Jagdish Kaur. The sale consideration was also denied.

Kamaljit Singh Thandi (defendant No. 4) took the plea that the suit has been filed by plaintiff No. 1 to grab SCF No. 97, Sector-35-C, Chandigarh. The agreement to sell dated 28.1.1990 is also a false document. The plaintiff is already facing criminal proceedings before the Chief Judicial Magistrate, Chandigarh, on account of FIR having been lodged against him. Infact, SCF No. 97, Sector-35-C, Chandigarh, has already been agreed to be sold by Kamaljit Singh Thandi and Jagdish Kaur in favour of Surinder Kaur,

Sandeep Singh and Satpal Singh etc. Kamaljit Singh Thandi had already executed the agreement to sell, Will, power of attorney, indemnity bond in favour of said vendees. Jagdish Kaur had also executed the agreement to sell dated 27.8.1989 and received Rs. 2 lacs in advance as earnest money from Surinder Kaur etc. and in part performance of the sale, handed over the possession of the ground floor to the purchaser after getting it vacated from U.P. Handloom in May, 1990. Smt. Surinder Kaur etc. have already filed a suit for specific performance against the legal heirs of Jagdish Kaur. She had also filed a suit for possession against Mohinder Singh (plaintiff) as Mohinder Singh had entered into unlawful possession of the said premises after breaking off the locks of the property in dispute on 22.12.1992.

From the pleadings following issues were made on 5.8.1999 :-

- “1. Whether defendant Jagdish Kaur entered into agreement on 28.1.1990 to sell the entire SCF No. 97, Sector-35-C, Chandigarh, in favour of the plaintiffs ? OPP
2. Whether the plaintiffs always willing and ready and still willing and ready to perform his own part of contract ? OPP
3. Whether the plaintiff is entitled for grant of specific performance of the agreement or for the alternate

RSA No. 4435 of 2013 (O/M)

-7-

relief ? OPP

4. Whether the suit is not maintainable in the eyes of law ? OPD
5. Relief. ”

From the pleadings following additional issues were made on 9.5.2002 :-

- “1. Whether a valid agreement to sell was executed between the parties and Jagdish Kaur on 28.1.1990 ? OPP
2. If issue No. 1 is proved, whether the plaintiff is entitled to relief of specific performance as prayed for ? OPP
3. Whether the suit is bad for mis-joinder or non-joinder of necessary parties ? OPP
4. Whether the suit is not maintainable in the present form ? OPD
5. Relief. ”

From the pleadings following additional issues were made on 5.2.2008 :-

- “1A. Whether Smt. Jagdish Kaur executed a Will dated 3.11.1991 in favour of her mother Ajaib Kaur ? OPD
- 2B. Whether Smt. Ajaib Kaur executed a Will dated 13.10.1993 in favour of her daughter Pritam Kaur ? OPD
- 3C. Whether marriage of Jagdish Kaur and Sadhu

Singh Hira was dissolved by custom, if so, its effect ? OPD ”

The learned Civil Judge (Junior Division) Chandigarh, decided issue No. 1-A against Ajaib Kaur. Issues No. 1 to 3 framed on 5.8.1999 and issues No. 1 and 2 framed on 9.5.2002, were decided against the plaintiffs. Issues No. 4 framed on 5.8.1999 and 9.5.2002 were decided in favour of the plaintiffs. Issue No. 3 framed on 9.5.2002 was also decided in favour of the plaintiffs being not pressed. Issue no. 2A was decided in favour of defendants. Issue No. 3C was decided against the defendants being not pressed. As such, the suit was dismissed by the learned Civil Judge (Junior Division), Chandigarh, vide judgment and decree dated 30.11.2009.

Against the said judgment and decree, Ajaib Kaur as well as Mohinder Singh etc. filed two separate appeals before the first appellate Court. The appeal filed by Ajaib Kaur was allowed with costs, whereas the appeal filed by Mohinder Singh etc. was dismissed with costs, vide judgment and decree dated 1.6.2013, passed by the learned Additional District Judge, Chandigarh. Against the said judgment and decree of the first appellate Court, Mohinder Singh has filed the present regular second appeal. However, no regular second appeal has been filed against the said judgment and decree of the first appellate Court in favour of Ajaib

RSA No. 4435 of 2013 (O/M)

-9-

Kaur.

I have the learned counsel for the parties and have also carefully gone through the file as well as the lower Court file.

Pritam Kaur had denied the execution of sale deed and rather claimed that it is a sham transaction. Heavy reliance has been placed on undertaking/declaration dated 5.11.1991 (Ex.D1), executed by plaintiff No. 1. There are two witnesses of the agreement to sell dated 28.1.1990 i.e. Sham Lal and D.S. Palta. Sham Lal and D.S. Palta were not examined to prove the said document.

The perusal of the original file shows that the said agreement to sell dated 28.1.1990 is of dubious nature. The original agreement to sell is stated to have been lost. The suit dated 5.3.1993 was filed only after the death of Jagdish Kaur on 3.2.1992. Only photostat copy of the agreement to sell dated 28.1.1990 was exhibited, which bears many cuttings. On the first page, there is cutting over the writing regarding ownership of Kamaljit Singh Thandi and after scoring it off, it is mentioned that Kamaljit Singh relinquished his right, vide registered relinquishment deed dated 28.4.1977. Then, there is overwriting over the receipt of the earnest money, which has been made from Rs. 1,00,000/- to Rs. 20,000/- in words and figures also. Such cutting is at several places at page

RSA No. 4435 of 2013 (O/M)

-10-

No. 3 of the agreement to sell dated 28.1.1990. However, on the last page of the said agreement to sell dated 28.1.1990, the earnest money is mentioned as Rs. 1 lac. There are signatures of Jagdish Kaur on the back of the first page regarding receipt of the earnest money. So many cuttings make the agreement to sell dated 28.1.1990 doubtful. None of the witnesses to the agreement to sell dated 28.1.1990 were examined. Mohinder Singh also failed to tell when the document was executed. Then, strangely enough, plaintiff No. 1 claims that on 9.10.1991, Smt. Jagdish Kaur executed a lease deed in his favour regarding half share of the said SCF No. 97, Sector-35-C, Chandigarh, on monthly lease of Rs. 20,000/-. The receipt (Ex.P3) is also produced by plaintiff No. 1, showing that Jagdish Kaur issued a receipt of Rs. 20,000/-. The lease was for the ground floor portion of the said SCF. The photostat copy of the said lease deed was produced and the original is stated to have been lost. The plaintiff No. 1 also produced the copy of DDR (Ex.P4) dated 20.7.1993 to show that the original documents have been lost. It is to be noted that there is no mention of agreement of sale in the lease deed (Ex.D3), allegedly executed on 9.10.1991. The fact that these documents being important documents, were not produced in original and are alleged to have been lost in suspicious manner, raises doubts about the genuineness.

Then, the perusal of relinquishment/declaration dated 5.11.1991 shows that Mohinder Singh (plaintiff No. 1) executed the said undertaking and declaration to the effect that the agreement to sell dated 28.1.1990 and the lease deed dated 9.10.1991 regarding Shop-cum-Flat No. 97, Sector-35-C, Chandigarh, are only paper transaction with him and Ms. Shashi Singla. He undertook that he shall not misuse the said documents or use or take the benefit from the said documents. He further stated that he does not get any right or title over the said property and that he has not paid anything to Jagdish Kaur. The plaintiff declined to give his specimen handwriting/signatures in the criminal case titled as State Versus Mohinder Singh, for the purpose of comparison. Mohinder Singh (plaintiff No. 1) never appeared before the Sub Registrar, Chandigarh, for execution of the sale deed or in case, there was status quo order, for extension of time.

Shri S.K. Saxena, Deputy Government Examiner of Questioned Documents, Shimla (DW3) opined that the disputed signatures on the undertaking/declaration dated 5.11.1991 are of Mohinder Singh.

The learned counsel for the appellant has relied upon the subsequent power of attorney (Ex.DW4/2), which Ajaib Kaur had executed in favour of Pritam Kaur, wherein reference has been

RSA No. 4435 of 2013 (O/M)

-12-

made to honouring of the said agreements with the plaintiff. Once the agreement itself is not proved, the said recitation is of no help to the plaintiff.

In this case, the findings of facts have been recorded by two Courts below. From the perusal of the entire lower Court file as well as the findings of both the Courts below, I am of the view that no question of law much less the substantial question of law arises. The findings of facts have been recorded by both the Courts below. After going through the file, I am of the view that there is no illegality or perversity in the same. It being so, I do not find any ground to interfere in the findings of facts recorded by both the Courts below, including the finding recorded regarding Will in favour of Ajaib Kaur by the first appellate Court. As such, there is no need to elaborately discuss the evidence of the parties. Consequently, the present regular second appeal fails and the same is dismissed. However, it is made clear that the LRs of deceased Jagdish Kaur were brought on record only to represent her in this case and this judgment shall not be taken to be a final verdict as to who is to inherit the property of Jagdish Kaur.

(KULDIP SINGH)
JUDGE

25.4.2016
sjks