

RSA No. 1149 of 2014 and RSA No. 1858 of 2014 (O/M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 25.4.2016

RSA No. 1149 of 2014 (O/M)

Surinder Kaur and another

..... Appellants

Versus

Amandeep Hira

..... Respondent

RSA No. 1858 of 2014 (O/M)

Surinder Kaur and another

..... Appellants

Versus

Pritam Kaur and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. H.S. Hooda, Senior Advocate, with,
Mr. Subhash Ahuja, Advocate, for the appellants
in all the cases.

Mr. Anil Ksheterpal, Senior Advocate, with,
Mr. M.S. Saini, Advocate, for respondent.

Mr. Gaurav Chopra, Advocate,
in CM Nos. 14755 and 14756 of 2014
in RSA No. 1858 of 2014.

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.

The present regular second appeals are directed against the judgment and decree dated 1.6.2013, passed by the learned Additional District Judge, Chandigarh, whereby separate appeals filed by Pritam Kaur, daughter of late Ajmer Singh as well as Sadhu Singh Hira, against the judgment and decree dated 30.11.2009, passed by the learned Civil Judge (Junior Division), Chandigarh, were allowed and the suit filed by plaintiffs Surinder Kaur and Sandeep Singh was dismissed with costs throughout. It is to be added here that the learned Civil Judge (Junior Division), Chandigarh, vide judgment and decree dated 30.11.2009, had decreed the suit of the plaintiffs Surinder Kaur etc. for specific performance of agreement of sale dated 27.8.1989 and directed the defendants to execute the sale deed within three months from the date of passing of the decree, subject to the condition that plaintiffs shall also pay/offer the balance sale consideration within the said period.

The brief facts of the case are that according to the plaintiffs Surinder Kaur and Sandeep Singh, Jagdish Kaur alongwith Kamaljit Singh Thandi was the owner in possession of SCF No. 97, Sector-35-C, Chandigarh. Sadhu Singh Hira is her (Jagdish Kaur's) husband. Jagdish Kaur agreed to sell all her rights, title and interest

in property bearing SCF No. 97, Sector-35-C, Chandigarh, in favour of plaintiffs, vide agreement to sell dated 27.8.1989 for a total sale consideration of Rs. 4,00,000/-. Rs. 2,00,000/- were paid as earnest money and the remaining amount of Rs. 2,00,000/- were agreed to be paid at the time of execution and registration of sale deed. The sale deed was to be executed within three years from 27.8.1989. It was further stated that the ground floor of said SCF was in possession of U.P. State Handloom Corporation Limited and after getting it vacated in May, 1990, the plaintiffs got the actual physical possession of the said property. The plaintiffs were and are always ready and willing to perform their part of contract. It is stated that Jagdish Kaur was issueless and after her death, she has been succeeded by her husband Sadhu Singh Hira.

Defendant Sadhu Singh in his written statement denied the agreement to sell. It was stated that the agreement to sell is a forged document. The payment of earnest money was also denied. It was further stated that the plaintiffs were never interested to perform their part of the agreement. The suit is time barred. Later on, Sadhu Singh got the written statement amended on 17.9.1997 wherein he took the plea that Jagdish Kaur and Kamaljit Singh Thandi, who was an NRI of England, had purchased the said site in open auction on 24.4.1974. Kamaljit Singh Thandi executed a

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general power of attorney in favour of his aunt Daljit Thandi, who further executed a registered relinquishment deed dated 12.12.1977 in favour of Jagdish Kaur. Therefore, Jagdish Kaur became full owner of the said SCF No. 97, Sector-35-C, Chandigarh. Later on, she got the site plan sanctioned and got construction done at ground floor and first floor on the said SCF. She also got sewerage, water and electricity connections transferred in her own name and rented out the ground floor and first floor of SCF No. 97, Sector-35-C, Chandigarh, to different tenants. U.P. State Handloom vacated the ground floor on 16.4.1990 and handed over the vacant possession to Jagdish Kaur. Jagdish Kaur further entered into an agreement to sell dated 28.1.1990 in favour of Mohinder Singh son of Milkha Singh to the extent of 70% and Smt. Shashi Singla wife of Prem Singla to the extent of 30% for total sale consideration of Rs. 6,00,000/-. Rs. 20,000/- were received as earnest money. On 12.2.1990, Kamaljit Singh Thandi filed a suit for declaration to the effect that he is the owner of half share in SCF in question and sought permanent injunction against Jagdish Kaur and Daljit Kaur Thandi from alienating etc. and further restraining the Estate Officer not to make any change of ownership of SCF in question. In the said suit, Jagdish Kaur and Smt. Daljit Kaur Thandi filed written statement on 6.1.1992, admitting the execution of agreement to sell

dated 28.1.1990 in favour of Mohinder Singh and Smt. Shashi Singla.

The Estate Officer took the stand that Jagdish Kaur is full owner of SCF No. 97, Sector-35-C, Chandigarh, subject to payment of unearned profits and dues. On 9.10.1991, Jagdish Kaur, on the basis of lease deed, handed over vacant possession of the ground floor of said SCF No. 97, Sector-35-C, Chandigarh, to Mohinder Singh and Prem Singla and since then, they are in possession thereof. Jagdish Kaur died on 3.2.1992 and thereafter, Mohinder Singh and Shashi Singla filed the suit for specific performance on 5.3.1993. It was further stated that the husband of the plaintiff late Sukhbir Singh Grewal, who was working as Deputy District Attorney in the Department of Vigilance of State of Punjab, was living on the first floor of House No. 129, Sector-18-A, Chandigarh, whereas Jagdish Kaur and Daljit Dhandi were living on the ground floor of said house. Jagdish Kaur and Daljit Kaur Thandi were having cordial relations with Sukhbir Singh Grewal. In the year 1990, Jagdish Kaur got MIG flat in Sector-45, Chandigarh by draw of lots and in order to complete the formalities, Sukhbir Singh Grewal, the husband of the plaintiff Surinder Kaur helped Jagdish Kaur. In this process, he became conversant with the handwriting and signature of Jagdish Kaur and after her death, in order to grab her property,

Sukhbir Singh Grewal forged and fabricated the agreement to sell dated 27.8.1989. On 27.8.1989, Jagdish Kaur was full owner of the property in question and there was no logic or likelihood for her to enter into an agreement to sell half share thereof. On 27.8.1989, Jagdish Kaur had no litigation regarding the suit property. It was further pleaded that Surinder Kaur filed the present suit for specific performance on 17.4.1993 after the suit for specific performance, filed by Mohinder Singh and Shashi Singla on 5.3.1993. By way of further amendment, defendant took the plea that the suit is barred by time under Order 2 Rule 2 of Code of Civil Procedure, 1908.

In the replication, the plaintiff reiterated her case and denied the relinquishment deed and stated that the agreement to sell in favour of Mohinder Singh and Prem Singla is forged and fabricated.

From the pleadings, following issues were framed :-

- “1. Whether the plaintiff is entitled for the specific performance of agreement dated 27.8.1989 ? OPP
- 1A. Whether the plaintiff has concealed material facts, if so its effect ? OPP
- 1B. Whether the suit is barred under Order 2, Rule 2 CPC ? OPP (framed on 16.1.2002).
2. Relief. ”

The lower Court, vide judgment and decree dated 30.11.2009, held that the agreement to sell dated 27.8.1989 is

proved and, therefore, the suit of the plaintiff was decreed. Against the said judgment and decree, Pritam Kaur, daughter of late Ajmer Singh, who claimed to be legal heir of Jagdish Kaur, as well as Sadhu Singh Hira, who claimed to be husband and legal heir of Jagdish Kaur, filed two separate appeals, which were allowed by the learned Additional District Judge, Chandigarh, on 1.6.2013 and consequently, the suit of the plaintiffs was dismissed. Against the said judgment and decree of the learned Additional District Judge, Chandigarh, dated 1.6.2013, two separate regular second appeals have been filed by Surinder Kaur etc. before this Court.

I have heard the learned senior counsel for the parties and have also carefully gone through the file.

So far as relinquishment deed dated 12.12.1977 is concerned, that is the dispute between Jagdish Kaur and Kamaljit Singh Thandi. Kamaljit Singh Thandi had filed a civil suit, challenging the relinquishment deed dated 12.12.1977, which was later on withdrawn by him. The relinquishment deed dated 12.12.1977 is Ex.D1 and was duly incorporated in the record of the Estate Officer. Therefore, it has to be held that Jagdish Kaur was full owner having lease hold rights in the disputed SCF since 12.12.1977.

The learned Additional District Judge, Chandigarh, while

reversing the findings of the learned Civil Judge (Junior Division), Chandigarh, has given the following reasonings :-

1. In the agreement, Jagdish Kaur stated that she is owner of half share, whereas she was owner of full share in the said SCF. Therefore, the agreement to sell in question is doubtful.
2. The ground floor of the SCF in question was in possession of U.P. Handloom as tenant. The said premises were vacated on 16.4.1990. But, in the agreement to sell, it is stated that the possession of entire ground floor of the said SCF has been delivered to the plaintiff. There is no explanation why such wrong recital was made.
3. The agreement to sell was typed by PW Paramjit Kapoor, who is stated to be working as a Typist in New Court Complex, Ludhiana. However, he had admitted in his cross examination that he is working as an Advocate and working at New Courts, Ludhiana. He does not know Jagdish Kaur personally. The agreement to sell was not typed on the stamp paper and also not typed on double space, which must be known to an Advocate.
4. The testimony of PW Paramjit Kapoor is doubtful as he did not sign the agreement in token of scribing it. He also states that Rs. 2,00,000/- were not paid in his presence, which is otherwise mentioned in the agreement. The agreement does not bear the

signature of Charanjit Singh, property dealer, who is stated to be mediator in the said deal on payment of commission of 2% by each party.

5. The parties did not sign the agreement to sell in the presence of PW5 Kuldip Singh Tambar and their signatures were already on the said agreement to sell when it was produced before him for signatures. No transaction took place in his presence. The other witness of agreement Darshan Singh did not appear for cross examination.

6. The document was brought by Jagdish Kaur, Charanjit Singh and Sukhbir Singh Grewal and was signed by witness on the asking of Sukhbir Singh Grewal. Therefore, it is held that PW Paramjit Kapoor, Scribe, is a set up witness.

7. Sukhbir Singh Grewal, husband of plaintiff Surinder Kaur was himself a Deputy District Attorney and the agreement was typed by an advocate and attested by another advocate and was not executed on the stamp paper of Rs. 2.25. The husband of the plaintiff knew that agreement is required to be executed on the stamp paper, then why he did not get it executed on a stamp paper ?

8. The plaintiff could not prove the source from which she got Rs. 2 lacs to pay the earnest money.

9. The ground floor of the said SCF in possession of U.P.

State Handloom was vacated in May, 1990 and according to the plaintiff, she was put in possession in part performance of the agreement to sell, but in her cross examination, she could not tell the date when they took possession. The statement of Surinder Kaur regarding execution of agreement to sell does not inspire confidence.

10. No endorsement was made on the agreement that the possession has been delivered to the plaintiff.

11. There is no explanation why the period of three years was fixed for execution of sale deed or payment of balance amount of sale consideration. No prudent man, who has paid Rs. 2,00,000/- as earnest money, which is 50% of the total sale consideration, will agree to get the sale deed executed within a period of three years without getting the possession of the property. The possession of ground floor of the said SCF was admittedly not delivered to the plaintiffs on 27.8.1989. The first floor of the said SCF was in possession of another tenant.

When the grounds mentioned by the first appellate Court are critically examined and corroborated with the documents placed on the lower Court file, this Court agrees with the findings on most of the grounds. In this case, if the background of the case is examined, it comes out that Jagdish Kaur was ordinarily residing at

House No. 129, Sector-18-A, Chandigarh. It is further alleged that Sukhbir Singh Grewal, who was then posted as Deputy District Attorney, was also living on the first floor of the said house, whereas Jagdish Kaur was living on the ground floor of the said house. In this way, the husband of Surinder Kaur (plaintiff) was having legal background. The property was situated at Chandigarh. Then, it is strange that the agreement is allegedly executed on a plain paper at Ludhiana, wherein one Paramjit Kapoor appeared and stated that he had typed the said agreement at New Court Complex, Ludhiana. However, later on, it came out that he is an advocate, practising in Ludhiana. However, the said Paramjit Kapoor did not mention anywhere in the said agreement that it was scribed by him. Therefore, the first appellate Court has rightly held that Paramjit Kapoor is a procured witness and his statement that he has scribed the said agreement cannot be believed. In view of the legal background of husband of one of the vendees Surinder Kaur, it also cannot be digested that a person having legal background will get the agreement executed on a plain paper, whereas it was required to be executed on the stamp paper of Rs. 2.25, as applicable at the time of alleged execution of the agreement.

The language of the agreement also shows that it is drafted by a legal brain as in condition No. 3, it is mentioned that the

'time has been agreed to be essence of agreement of sale'. Further, admittedly, Jagdish Kaur was not in possession of the ground floor of the SCO in question, which was in possession of U.P. State Handloom Corporation Limited at the time of execution of the alleged agreement. However, in the agreement, there is no mention that the ground floor of the said SCF is in possession of U.P. State Handloom Corporation Limited and the possession will be delivered later on. Rather, it is mentioned that the possession of the ground floor has been delivered. The wrong recital in the agreement also makes it highly doubtful. Strangely, in the agreement it is mentioned that the deal is struck by Charanjit Singh, property dealer, who is to be paid a commission fee of 2% each. However, the said Charanjit Singh did not sign the agreement. It is also not understood that when the plaintiff and vendor were living in the same house, what was the need of involving a property dealer and pay 2% each commission to him, thereby losing total 4% of the total consideration. Further, half of the earnest money is stated to have been given at the time of agreement and strangely enough, a long period of three years was given for the purpose of execution of the sale deed. There is no mention in the agreement as to whether there was any special reason, for which such a long period of three years is given. This also makes the agreement doubtful. The

plaintiff did not make any claim during the lifetime of Jagdish Kaur and the suit was filed only after the death of Jagdish Kaur on 3.2.1992. This is in addition to the other grounds considered by the first appellate Court while reversing the judgment of the lower Court. The statement of Kuldip Singh, Advocate, who is stated to be an advocate of Ludhiana and attesting witness of agreement has also been discussed by the lower Court, wherein he has stated that the signatures of the party are already there when they were presented. The other attesting witness Darshan Singh only appeared for examination and did not appear for cross examination. Therefore, his cross examination is liable to be discarded.

The grounds for interference in the judgment of lower Court in regular second appeal are very limited. In the present case, the judgment of the first appellate Court is based on appreciation of facts. After discussing the said facts, as mentioned above, this Court does not find any illegality or infirmity in the findings of facts recorded by the first appellate Court. Moreover, in this case, no substantial question of law arises.

In view of the foregoing discussion, the findings recorded by the first appellate Court are affirmed. Consequently, both the regular second appeals are dismissed with costs. However, it is made clear that the LRs of deceased Jagdish Kaur were brought on

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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