

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

RSA No.4755 of 2016 (O&M)

Date of decision : 26.07.2017

Pritam Kaur

...Appellant

Versus

Sarabjit Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. S.B.S. Sobti, Advocate for the appellant.

ANIL KSHETARPAL, J.

The defendant No.1 has filed the present Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiff had filed a suit for possession by specific performance of agreement of sell dated 09.12.1992 with respect to the plot measuring 145-D. It was asserted that the defendant No.1 representing herself to be owner, had agreed to sell the house in question for a sale consideration of ₹3,85,000/-. The entire sale consideration was received and the possession was delivered to the plaintiff. The plaintiff claimed that she continues to be in possession in part performance of the agreement to sell dated 09.12.1992. The defendant No.1 also executed a irrevocable power of attorney dated 27.01.1993 in favour of Dalbir

Kumar Sharma, Property Dealer authorising him to execute the sale deed in favour of plaintiff on behalf of defendant No.1.

The plaintiff had further pleaded that the defendant had maliciously filed a suit for declaration to the effect that she is owner in possession of the suit property and the plaintiff in this suit be restrained from alienating the suit property. The defendant No.1 also had illegally revoked the power of attorney given to Dalbir Kumar Sharma. The defendant No.1 admitted her ownership. However the execution of the agreement to sell and receipt of sale consideration was denied. It was claimed that the plaintiff alongwith her husband Sukhminder Singh Mangat took the signatures of defendant No.1 on some blank papers and forms, for submitting applications for providing amenities in the locality and defendant No.1 in good faith without doubting the bona fides of the plaintiff and her husband namely Sukhminder Singh Mangat appended her signatures.

The defendant No.2-Improvement Trust, Ludhiana filed a separated written statement and stated that Pritam Kaur-defendant No.1 had submitted an application for execution of the sale deed. However, later on she submitted that she has not executed any power of attorney.

The defendant No.1 did not step into the witness-box to deny the validity of agreement to sell.

The learned trial Court after appreciating the evidence available on the record decreed the suit filed by the plaintiff. The learned trial Court also noticed that suit filed by the defendant No.1-Pritam Kaur

claiming declaration that she is owner in possession, has been dismissed.

The first appeal filed by Pritam Kaur was also dismissed by the learned Additional District Judge after re-appreciating the evidence.

I have heard the learned counsel for the appellant.

Learned counsel for the appellant has made following submissions:-

- i) The Courts below have heavily relied upon the judgment passed on 16.10.2003 while deciding the suit filed by the defendant No.1-appellant. Such finding cannot be treated as res-judicata. He further submits that there was no issue of res-judicata.
- ii) In the earlier suit decided on 16.10.2003, there was no issue with regard to due execution of agreement to sell and, therefore, the earlier judgment could not be relied upon.
- iii) Counsel for the appellant has further submitted that the agreement to sell dated 09.12.1992 was executed whereas General Power of Attorney is dated 27.01.1993. Although, agreement to sell is of previous date however it has been mentioned that General Power of Attorney has been given to Dalbir Kumar. Therefore, it is obvious that the agreement to sell is a suspicious document.
- iv) The plaintiff has prayed for possession whereas it is the case of the plaintiff that the possession has been delivered to her and she continues in possession.
- v) The Court could not have directed the defendant No.2-Improvement Trust to execute the sale deed in favour of the

plaintiff because defendant No.1 was only allottee and no sale deed had been executed in favour of defendant No.1.

- vi) After lapse of 24 years, it would be inequitable to order the specific performance of agreement to sell.
- vii) The plaintiff has not stepped into the witness-box and, therefore, the suit filed by the plaintiff could not be decreed.

I have carefully considered the arguments addressed by the learned counsel for the appellant. With regard to submission Nos.1 and 2, it is suffice to note that Pritam Kaur-defendant No.1 had filed a civil suit claiming declaration that she is owner in possession of the property. The plaintiff, in the present suit, was defendant No.3 in the suit filed by Pritam Kaur. The defendant No.3 had put up a defence that the defendant No.3 is in possession of the property pursuant to the agreement to sell dated 14.01.1991. It was further pleaded that total sale consideration has been paid and possession has been delivered. It was further pleaded that defendant No.1-appellant in the present suit had executed the General Power of Attorney dated 27.01.1993 authorizing Dalbir @ Balbir Kumar Sharma to execute the sale deed in favour of plaintiff. In that suit filed by Pritam Kaur, after framing of the issues, parties led their evidence. The Court while delivering judgment on 16.10.2003 held that the defendant No.3 was in possession of the property. She has admitted her signatures on the power of attorney. It was further found that the appellant had executed an agreement to sell with the plaintiff herein (defendant No.3 in previous suit) and received the entire sale consideration. The findings

arrived at by the Civil Court while deciding the suit between the same parties on 15.10.2003 is extracted as under:-

“14. I have carefully considered the respective submissions. It is the cause of the plaintiff that her signatures were obtained by fraud and misrepresentation, but she admits her signatures on the documents. It is requirement of law U/o 6 Rule 4 CPC that whenever a person takes pleas of fraud and misrepresentation, then it is the legal requirement that particulars of such fraud of misrepresentation must be given in the pleadings and are required to be proved. The view was taken in case Someshwar Nath Bhargava Vs. Smt. Kusum Kumari 1993-CCC-18 by Hon'ble Allahabad High Court. In this case, plaintiff has not given any particulars of fraud or misrepresentation rather, she has not been able to make out case that defendants were on visiting terms with her in respect of a dispute with her son. The act and conduct of the plaintiff also suggest that she is not coming to court with clean hands. Her denial of giving power of attorney to Sukhminder Singh Mangat stands belied when she herself got power of attorney cancelled by way of an registered document and clearly mentioned in that document that she had earlier given power of attorney to Sukhminder Singh Mangat. So, in these circumstances, it becomes clear that plaintiff had handed over the possession of the house in dispute of her own to defendant No.3 and she had also entered into an agreement to sell with defendant Sarabjit Kaur. In support of her pleadings that her articles were forcibly thrown out by the defendants No.1 to 3 is also not believable as no one from the thickly populated area came to rescue the plaintiff,

rather she quietly took away her articles to a room of gurudwara and resided there for some days. This act of the plaintiff is also very doubtful. Therefore, it is clear that plaintiff has no case at all rather, in her cross examination she has admitted her signatures on the receipt of receiving money, copy of which is Ex.P1 and agreement is Ex.P2. So, nothing remains more to be discussed on the subject. Issue No.4 is accordingly decided against the plaintiff.”

A reading of the impugned judgment passed by the Courts below does not show that the findings of the Courts are based upon plea of res-judicata. The Courts have independently appreciated the evidence available on the file. Of course the findings arrived at in the previous suit decided on 16.10.2003 Ex.P6 on the record has been taken in consideration. Therefore, the arguments of the learned counsel for the appellant that findings of the Court are based on res-judicata is not borne out from the record.

With respect to point No.3, it is suffice to say that once the agreement to sell is established and proved on the file not only in the present suit but also on earlier occasion in the previous suit, resulting in judgment dated 16.10.2003, General Power of Attorney is of a subsequent date, would not in any way create a doubt about the validity of the agreement to sell. The agreement to sell would not become suspicious merely because General Power of Attorney is being executed after month and a half.

Another submission of learned counsel is that since it is the

case of the plaintiff that the possession had been taken and she continues to be in possession, therefore, the suit for possession was not maintainable. The suit is for specific performance of the agreement to sell. The plaintiff has stated very specifically in his plaint that she was delivered possession at the time of entering into the agreement to sell when entire sale consideration was received by the defendant No.1. Therefore, merely because decree for possession has been sought for, would not give a cause to the appellant to defeat the suit for specific performance of agreement to sell.

Next submission of learned counsel is that since the defendant No.1 was only a allottee, therefore, it was at the most actionable claim. Hence, specific performance of agreement to sell could not be ordered and defendant No.1 could not be called upon to execute the sale deed. In this case, it is the case of the defendant that allotment was made in favour of the defendant No.1 and she has constructed the house. Once house has been constructed and the authority, which allotted the plot is party to the suit i.e. defendant No.2, the Court was well within its power to order the execution of the sale deed by defendant No.1 and on her failure, defendant No.2 was directed to execute the sale deed.

Learned counsel for the appellant has further submitted that specific performance is being ordered after a lapse of 24 years and specific performance of agreement to sell is inequitable.

I have carefully considered the submissions made by the learned counsel for the appellant.

In this case, suit was instituted in the year 1995. The defendant No.1-appellant had received entire sale consideration and delivered the possession. The suit remained pending because the defendant No.1 had separately filed an earlier suit seeking declaration that she is owner in possession. In that suit also, the validity of the agreement to sell was adjudicated upon. It was in these circumstances, this suit came to be decided on 21.05.2014 by the trial Court. Thereafter the defendant No.1 filed an appeal which has also been dismissed.

Taking into consideration the fact that the entire sale consideration has been paid and the possession has been delivered, it is the defendant No.1-appellant who was responsible for the delay in the decision of the case. The decree for specific performance of agreement to sell cannot be said to be inequitable.

Counsel for the appellant has further submitted that since plaintiff has not stepped into the witness-box, therefore, suit of the plaintiff has to be dismissed.

I have considered the submissions made by learned counsel for the appellant. Looking into the facts and circumstances of the case particularly the findings arrived at in the judgment dated 16.10.2003 wherein it was specifically recorded that the defendant No.1 had entered into the agreement and received the entire sale consideration, it is not possible to accept the contention of the learned counsel for the appellant. Further Sukhminder Singh Mangat has appeared as PW1. Swaran Singh-husband of the plaintiff has also appeared in the witness-box. It was the

allegation of defendant No.1 that Sukhminder Singh Mangat had obtained her signatures on the blank papers, therefore, once Sukhminder Singh Mangat appeared in the witness-box, adverse inference cannot be drawn against the plaintiff on account of her non-appearance in the witness-box in evidence to prove her case.

Counsel for the appellant has not been able to point out any substantial questions of law in terms of Section 100 CPC. Counsel for the appellant has further not been able to bring forth any ground which may fall within the four corners of Section 41 of the Punjab Courts Act, 1918

Finding no merit in the present appeal, the same is ordered to be dismissed.

26.07.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No