

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

1. RSA No.6053 of 2016 (O&M)
Date of decision : 22.12.2017

Smt. Nirmala Devi

...Appellant

Versus

Abhay Singh and others

...Respondents

2. RSA No.6191 of 2017 (O&M)
Date of decision : 22.12.2017

Krishan

...Appellant

Versus

Abhay Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Mukesh Rao, Advocate for the appellant.

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. V.P. Sangwan, Advocate for the appellant
(In RSA No.6191 of 2017)

Mr. Akshay Bhan, Sr. Advocate with
Mr. Sanjay Verma, Advocate and
Mr. Santosh Sharma, Advocate for respondent Nos.1 and 2.

ANIL KSHETARPAL, J.

Before the judgment could be pronounced in RSA No.6053 of
2016 reserved on 14.12.2017, another appeal bearing RSA No.6191 of 2017

arising from the same judgment and decree of the learned First Appellate Court was listed on 20.12.2017. Learned counsel for the appellant in RSA No.6191 of 2017 was also heard at length. Hence, both the appeals arising out of a suit are being decided by a common judgment.

Defendant Nos.1 and 2 are in separate Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while decreeing the suit for specific performance of the agreement to sell with consequential relief of permanent injunction.

The plaintiffs-respondents had filed a suit for possession by way of specific performance of the agreement to sell dated 25.04.2005. It was asserted that 47 kanals of land was agreed to be sold at the rate of ₹5,65,000/- per acre and ₹20,000/- was paid as earnest money. As per the agreement to sell, the sale deed was to be executed and registered within a period of 4 months. The plaintiffs further pleaded that the defendants have not come forward for execution of the sale deed, although, the plaintiffs were always ready and willing. They even visited the office of the Sub-Registrar alongwith balance sale consideration. The plaintiffs also served notices to the defendants but they did not come forward to execute the sale deed.

In reply, defendant No.1 pleaded that the plaintiffs had got her thumb-impression on some forged documents on the assurance that the plaintiffs would engage another counsel on her behalf and get pending partition proceedings decided on an early date.

Defendant No.2 had pleaded that he was a bona fide purchaser

pursuant to the sale deed dated 19.08.2005. He has further pleaded that there was an agreement to sell in his favour dated 14.02.2005 which was prior in time.

Both the Courts below after appreciating the evidence available on the file decreed the suit filed by the plaintiffs.

I have heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the records.

Learned counsel for the appellant has vehemently argued that the agreement to sell is typed. However, material words have been filled with hands. He has referred to the agreement to sell where rate at which the land was agreed to be sold, the earnest money, the target date for execution and registration of the sale deed, have been filled with hands.

He has further submitted that in fact, defendant No.1-appellant is a simple uneducated lady and, therefore, the plaintiffs took advantage of her simplicity. Learned counsel for the appellant has further submitted that there is cutting and overwriting in the register of the Stamp Vendor. Learned counsel for the appellant has further submitted that there are contradictions in the statement of witnesses.

On the other hand, learned counsel for the respondents has submitted that both the Courts below have appreciated the evidence available on the file and there is no error in the judgments of the Courts below.

I have examined the original agreement to sell Ex.P1 on the file. No doubt, the agreement to sell is typed one, however, the rate of the

land at which the land being sold, the amount of the earnest money and the target date for execution and registration of the sale deed, have been filled with hands. But in the considered opinion of the Court, these facts itself cannot be treated as a circumstance to deny the specific performance of the agreement to sell. The agreement to sell is duly thumb-marked by defendant No.1-appellant. The agreement to sell runs into two pages and both the pages have been thumb-marked by Smt. Nirmala Devi. In fact, defendant No.1-appellant does not dispute her thumb-impression.

Next argument of the learned counsel is that the appellant is a simple uneducated lady and, therefore, she fell prey to the cleverness of the plaintiffs.

In the considered opinion of this Court, the position is not as being projected by the learned counsel for the appellant. It is not disputed that the partition proceedings were pending when defendant No.1-appellant purchased the land vide sale deed dated 30.06.2003 from Sh. Gian Chand. After the purchase of the property, she moved an application for being added as a party in the partition proceedings pending before the Assistant Collector, Ist Grade, Pataudi. When the partition proceedings were pending, it is admitted case of defendant No.1-appellant that she was attending the Court proceedings. In the written statement, she has stated as under:-

“That the partition proceedings was going on and the date was mostly fixed twice in a month, during the partition proceedings the defendant saw the plaintiff in Tehsil Pataudi so many times. The answering defendant emagine that the plaintiffs are some powerful persons and so many persons meet to the plaintiff in Pataudi Tehsil, under this impression

the defendant talk to the plaintiffs for early decision of partition application which was pending a long time. The plaintiffs are local persons, they mostly came present in Pataudi Tehsil. The plaintiffs told the defendant that they are master of revenue papers regarding agricultural land. The plaintiffs prepared some forged documents on the papers which was thumbmarked by me on the assurance that they will engage an other council on behalf of you in the pending partition proceedings and they assured me that your partition case will be decided very soon.”

A reading of the aforesaid statement would clearly show that defendant No.1-appellant cannot profess that she is simple lady and did not know the contents of the agreement to sell. The agreement to sell is written in Dev Nagri (Hindi) which is a local language. The appellant is resident of Delhi. Therefore, the argument of the learned counsel for the appellant cannot be accepted.

Learned counsel for the appellant has laid much emphasis on the cutting/overwriting in the register of the Stamp Vendor.

Learned counsel has further submitted that the stamp paper for the agreement to sell was purchased on 21.04.2005 whereas the agreement to sell is dated 25.04.2005.

The register of the Stamp Vendor do show some cuttings while writing the name of the husband of defendant No.1-appellant. However, in the considered opinion of this Court, this would not make any material differences particularly when there is no cutting on the agreement to sell and the agreement to sell is thumb-marked by defendant No.1-appellant. The agreement to sell is attested by two marginal witnesses, one of whom

namely Prem Singh has been examined as PW7.

Learned counsel for the appellant has pointed out that there are certain contradictions in the statement of the witnesses. However, those are minor contradictions which would not have any material bearing on the decision of the case.

Still further, defendant No.1-appellant is a clever person. She sold the land to defendant No.2 after entering into the agreement with the plaintiffs. Had she been simple lady, she would not sold the land to defendant No.2 on 19.08.2005. The agreement to sell with the plaintiffs is at the rate of ₹5,65,000/- whereas she has sold the land to defendant No.2 at the rate of ₹5,00,000/-.

During the course of the arguments, learned counsel for the appellant admitted that such sale was a sham transaction. This being the position, the appellant cannot profess that she is a simple lady who could not understand what is wrong or right for her.

Learned Senior Counsel for defendant No.2 has submitted that he is a bona fide purchaser and, therefore, decree for specific performance of the agreement to sell cannot be passed in favour of the plaintiffs. It may be noticed that defendant No.2 had not filed first appeal.

Learned trial Court after discussing the evidence available on the file had held that the agreement to sell being propounded by defendant No.2 dated 14.02.2005 is antedated and the transaction between defendant Nos.1 and 2 is not bona fide. Learned trial Court has recorded as under:-

“The conduct of defendants speak volumes that they are deposing falsely on material aspects. DW2 Sh Krishan i.e.

defendant No.2 in the present case, has admitted the fact that he is not aware from where she arranged the amount of Rs.5 lacss allegedly paid as earnest money by her on the date of execution of agreement to sell Ex.D2. He has even admitted the fact that he remained sitting in the car on the date of execution of sale deed Ex.D1 and has also admitted the fact that he is not aware who is Karan Singh. He further conceded the fact that he has not taken any money on lend from anyone and even had not withdrawn the amount from any bank account. He further submitted that she had taken the said amount from his father who had recently sold the agricultural land. However, later on he conceded that he could not adduce the sale deed on the case file.

20. All the aforesaid conduct reveal that defendant No.2 never had sufficient sale consideration of Rs.5 lacs or Rs.29,29,500/- for making payment to defendant No.1. Defendant No.2 himself is not aware of any proceedings. He neither took active part at the time of registration of sale deed nor is aware as to who purchase stamp paper of agreement Ex.D2. His said conduct indicates that he was mere puppet in hand of defendant No.1 and was acting at her instance. All the aforesaid facts cast serious doubt on the authenticity of the agreement to sell Ex.D2. Rather, it can be well inferred that the said agreement to sell Ex.D2 or sale deed Ex.D1 were without sale consideration and agreement to sell Ex.D2 was anti-dated to defeat the right and title of the plaintiffs. It is well settled that sale deed without consideration is nullity and thus Ex.D1 is declared null and void and not binding on the right of plaintiffs.”

Learned counsel for the defendant could not dispute the correctness of the finding given by the learned trial Court in this regard. At the cost of repetition, defendant No.2 had not filed any appeal before the

First Appellate Court to challenge this finding. Further defendant Nos.1 and 2 are resident of same area i.e. Rajokri, New Delhi. Therefore, this Court does not find any force in the submission of the learned counsel for defendant No.2.

In view of the aforesaid discussions, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Both Regular Second Appeals are dismissed.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

22.12.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No