

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

RSA No.5956 of 2015 (O&M)

Date of decision: 18.12.2017

Paramjit Kaur

...Appellant

Versus

Om Parkash (since deceased) through his LRs and others

...Respondents

CORAM:-HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present:- Mr.D.S.Malwai, Advocate for the appellant

Mr.Tribhawan Singla, Advocate
for the respondents/Caveators

RAJIV NARAIN RAINA, J. (Oral)

1. Heard counsel for final disposal.
2. This appeal has been preferred against the judgments and decrees of both the courts below whereby the suit filed by the plaintiffs-respondents has been decreed in their favour. The plaintiffs-respondents filed a civil suit claiming that they are owners in possession of the suit property detailed in the plaint. The plaint was filed by the legal heirs of late Om Parkash. Om Parkash was unmarried, issueless and was an old man. Earlier, the suit was decreed vide judgment and decree dated 6th November, 2009. Against the said judgment and decree, defendant preferred an appeal and the same was allowed on 18th July, 2012 and the first appellate court remanded the matter to the trial court with a direction to consider the counter claim filed by the defendant and pass a fresh judgment and decree. On 21st November, 2012, defendant/appellant, Paramjit Kaur appeared and made a statement that Om Pakash has died during the pendency of the matter; she has got actual possession of upper portion of the disputed property from Shanti Devi, sister of Om Parkash

(LR plaintiff) and thus, she stated that she did not want to proceed with the counter claim filed by her and wanted to withdraw the same. The trial court by its judgment and decree dated 3rd December, 2012 allowed the suit in favour of the plaintiff. The defendant assailed the judgment and decree of the trial court before the first appellate court. The appeal filed by the defendant has been dismissed by the first appellate court vide its judgment and decree dated 17th August, 2015. The defendant has assailed the judgments and decree of both the courts below in this Regular Second Appeal.

3. Briefs fact leading to the lis may be noticed. Om Parkash was unmarried, issueless and an old man. Jaswinder Singh, husband of the defendant who was neighbour of Om Parkash was helping Om Parkash during his life time and defendant and her husband used to visit the house of Om Parkash through the door of the stair case of the first floor. On the request of the defendant, Om Parkash executed a sale deed regarding the first floor of the house in her favour for a consideration of ₹ 1,41,000/- and it was settled that Om Parkash will reside in the house in dispute till death. The sale deed was got executed by the defendant without disclosing the contents of sale deed to Om Parkash. Consideration was to be paid to Om Parkash after registration of sale deed at the seat of the scribe. Om Parkash in his belief got registered sale deed No.2873 dated 9.2.1999, but the defendant did not pay any consideration to Om Parkash after registration of sale deed. When this fact came to the notice of Om Parkash, he wanted to get the sale deed cancelled by requesting the Sub Registrar. Then defendant at the request of witnesses executed agreement on the same day in the presence of same witnesses in which defendant admitted that no consideration had been passed from her to Om Parkash

and it was agreed that Om Parkash will reside in the said house till his death. Thus, the sale deed No.2873 dated 9th February, 1999 executed by Om Parkash being without sale consideration has got no value in the eyes of law and is illegal, null and void. Agreement Ex P-3 is the document which proves that no sale consideration has been passed to Om Parkash which reads as under:-

“Ex.P-3

We Paramjit Kaur wife of Jaswinder Singh resident of Old Grain Market Sangrur Party No.1 and Om Parkash son of Ram Dayal resident of H.No.114, Old Grain Market Sangrur, Party No.2 and do the following writing by way of ikrarnama.

1.That Party No.2 owns and possesses one house No.114, Old Grain Market. The Party No.2 is about 80 years and in this house Party No.2 and his sister Shanti Devi are residing. Today Party No.2 is executing sale deed in favour of Paramjit Kaur, because Paramjit Kaur is serving Om Parkash Party No.2 and his sister Shanti Devi.

2.That prior to this party No.2 had made a will in favour of husband of party no.1, namely, Jaswinder Singh and thereafter had made one more will in favour of his relatives Sanjay Kumar and Sanjeev Kumar sons of Jagdish Kumar. Today there being no dispute between the parties is making sale deed in favour of party no.1.

3.That the sale deed being made by party No.2 Om Parkash in favour of party No.1 Paramjit Kaur regarding the house of No.114, situated Old Grain Market, Sangrur of the house of Party No.2. In this connection Party No.1 Paramjit Kaur had not made any payment nor party No.2 has received any amount from Paramjit Kaur on account of the sale deed.

4.That Party No.2 Om Parkash is executing the sale deed in favour of Party No.1, Paramjit Kaur because he is happy from our services and wants that after his death no dispute take place regarding his property.

5.That the entire expenditure for the sale deed have been born by Party No.1 Paramjit Kaur.

6.That Party No.2 and his sister Shanti Devi will reside in this house till their death, the sale deed of which is being made by Party No.2 in favour of Party No.1 and Party No.1 will have no right to evict party No.2 from the house.

7.That after the death of party No.2 and his sister Party No.1 will be owner of the house.

This writing has been made so that record remains.

Dated: 09.02.1999

Witness

Sd/-Arjun Singh Numberdar, Sangrur

Sd/-Party No.1 Paramjit Kaur

Witness sd/- Harjit Singh son of Partachh Singh r/o Kishanpura Road, Sangrur

The writing has been read, heard and is correct.

Sd/- Paramjit Kaur

Sd/- Om Parkash.”

4. Both the parties led their respective evidence in support of their case. PW4 Arjan Singh who is Lambardar stated that sale deed Ex.P-2 was executed by Om Parkash in favour of the defendant- Paramjit Kaur. He is attesting witness of the said sale deed. He stated that on the same day, an agreement Ex.P-3 was executed as defendant-Paramjit Kaur had failed to pay the sale consideration to Om Parkash. PW6 Bhagwant Krishan Bindal stated that Om Parkash was known to him who had executed a registered will in favour of Sanjay Kumar and Sunil Kumar

grandsons of his brother Gian Chand who are plaintiffs being LR's of Om Parkash in the suit. He stated that Om Parkash had signed the will after admitting its contents as correct in his presence as well as in the presence of Vinod Kumar. PW9 Pawan Kumar Garg deed writer stated that on 6th October, 1998, he had scribed cancellation deed-cum-will on the request of Om Parkash son of Ram Dial. He stated that Om Parkash had signed the will after admitting its contents as correct in the presence of attesting witnesses Vinod Kumar, M.C. and D.C.Garg.

5. Both the courts below after appreciation of evidence on record held that no sale consideration was made to Om Parkash. In view of provisions of Section 54 of the Transfer of Property Act (for short "the Act"), a transaction of sale is not complete unless consideration is paid or promised to be paid. From the agreement Ex.P-3, it is clear that there is even no promise to make the payment of sale consideration. In the sale deed, it has been stipulated that Om Parkash and his sister Shanti Devi (LR of plaintiff) would have a right to reside on the first floor of the demised house till their death. This fact has been admitted by defendant Paramjit Kaur in her cross-examination that she never took the possession of the house even after the execution of the sale deed as Om Parkash and Shanti Devi were residing here. It is also an admitted fact that no sale consideration was paid before the Sub Registrar at the time of registration of sale deed. Both the courts below concurrently held that the sale deed was executed without sale consideration and in view of the provisions of Section 54 of the Act, this transaction does not amount to transaction of sale of immovable property and thus, the sale deed Ex.P2 is null and void and without consideration.

6. Mr.Malwai appearing for the appellant relies on **Kaliaperumal vs. Rajagopal and Anr.**, JT 2009 (7) SC 124 in support of his submission that even if it is assumed that no sale consideration has been made, even then vendor would pass the title of property to vendee. In this case, the Supreme Court considered the provisions of Section 54 of the Act and held in short as under:-

“(i) If the intention of parties was that title should pass on execution and registration, title would pass to the purchaser even if the sale price or part thereof is not paid.

(ii) Intention of parties can be gathered from the documents itself or from the conduct of parties.

(iii) In the event of non-payment of price, remedy of vendor is to sue for balance payment, he cannot avoid sale.”

7. In the aforesaid case, the suit property originally belonged to the family of the respondents. First respondent and the second respondent sold the properties to the appellant for a consideration of ₹ 43,000/- by a deed dated June, 26, 1983. Out of the sale consideration of ₹ 43,000/-, a sum of ₹ 3,000/- was to be appropriated towards the discharge of the mortgage executed by the respondents in favour of the appellant. The balance of ₹ 43,000/- was to be paid before the Sub Registrar at the time of registration of sale deed. All the three courts had concurrently found that the appellant had pleaded a false case that he had paid a part of the balance consideration, that is ₹ 25,000/- on July 21, 2003 to the respondents to enable them to purchase a lorry. This case of the appellant was disbelieved by the trial court as well as the first appellate court which is the final court of facts. That finding was not challenged by the

appellant before the High Court. The Supreme Court held that the appellant was ready and willing to make payment of only ₹ 15,000/- and not ₹ 40,000/-. He had never shown his readiness or willingness to make payment of ₹ 40,000/- which was the balance of the consideration and which had to be paid only in the presence of the Sub Registrar, as mentioned in the deed. The Supreme Court observed that the first respondent who was present before the Sub Registrar on behalf of the respondents on October 26, 1983, was justified in not signing or affixing his thumb mark in the endorsement of registration to be made on the deed, by the Sub Registrar.

8. It was in these circumstances, the Supreme Court held that the parties really intended that title of ownership to the suit properties would pass to the purchaser, only after payment of full consideration by the purchaser to the vendor as a condition precedent. Parties did not intend that there should be transfer of ownership merely on execution and registration of the deed. The facts of the aforesaid case are entirely different from the present one. In the present case, not even a penny was paid to Om Parkash and even no intention had been shown by the defendant-Paramjit Kaur to make part payment of even a single penny to Om Parkash. I do not find any intention in the mind of Om Parkash agreeing to pass on the property to Paramjit Kaur without payment of money in view of Ex.P-3 as reproduced above in which defendant admitted that no sale consideration has been made over to Om Parkash. Therefore, the facts and circumstances of the present case are entirely different from those of **Kaliaperumal** case, supra.

9. In view of the above, I have no reason to substitute my opinion on the findings of fact arrived by both the courts below on a

proper appreciation of the evidence on record. I find no question of law much less a substantial one in this appeal. I do not find any illegality and impropriety in the impugned judgments and decrees passed by both the courts below.

10. For the foregoing reasons, this appeal fails and is dismissed.

11. Caveat stands discharged.

(RAJIV NARAIN RAINA)
JUDGE

18.12.2017
MFK/Poonam (II)

Whether Speaking/reasoned

Yes

Whether Reportable

No