

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

125

RSA No.3023 of 2017 (O&M)

Date of decision: 15.11.2017

Jagmati

..... Appellant

Versus

Albel Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vikram Punia, Advocate
for the appellant.

Mr. Harkesh Manuja, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant is in regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 27.12.2005 with respect to land measuring 10 kanal and 06 marlas. In the written statement, execution of the agreement to sell and receipt of the earnest money was denied. Learned trial Court after appreciating the evidence available on the file decreed the suit filed by the plaintiff. Learned First Appellate Court after re-appreciating the evidence affirmed the finding of fact arrived at by the trial Court.

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

Learned counsel for the appellant has made following submissions.

1. Devender, the attesting witness was not known to Jagmati.
2. The stamp vendor who had sold the stamp paper for execution of the agreement to sell was not known to Jagmati.
3. Devender was not an independent witness as he was a friend of plaintiff-Albel Singh.
4. The agreement to sell was executed at the time when Jagmati was not the owner of the property.
5. The agreement to sell is not entered in the register of the scribe.

On the other hand, learned counsel for the respondent has submitted that the agreement to sell not only bears the thumb impression of Jagmati but also thumb impression of her husband-Rajbir.

Learned counsel for the respondent has read over the statement of Rajbir who admit that Devender, the attesting witness was their relative and were known. It is also admitted by Rajbir that they have not lodged any FIR or complaint to any one till date with regard to forging of the agreement to sell. Rajbir interestingly further say that Albel Singh i.e. the plaintiff has been calling upon them (husband and wife) for execution of the sale deed. Learned counsel has further referred to the statement of Rajbir who states that the defendant has never made any effort to get the thumb impression of Jagmati compared.

I have considered the submissions. The statement of Rajbir which has been read over to me, answers the argument No.1 and 3 addressed by learned counsel for the appellant. Devender was a relative of defendant and hence known to the family. Still further, the defendant-

appellant or husband never made any complaint to any one with regard to forging of the agreement to sell. Agreement to sell bears thumb impression of Jagmati on both the pages. Jagmati had also put her additional thumb impression on the revenue stamp affixed on the second page. Rajbir has also put his thumb impression on the agreement to sell. Rajbir admits that his thumb impression was taken although fraudulently.

Second argument of learned counsel is that stamp vendor was not knowing Jagmati. Stamp vendor has license to sell the stamp papers. He is not required to be known to the parties. Learned counsel for the appellant could not bring forth any instruction of the Government which require that before selling the stamp paper, the stamp vendor must verify the identity of the person who is purchasing the stamp paper.

Next argument of learned counsel is that Devender was not an independent person because he was known and friend of Albel Singh. However, same is the position with regard to Jagmati. Rajbir admits that Devender is relative to them and hence, known. If Devender was the person who was known to both the parties, then he was the best witness who has attested the document and has appeared in the witness box. The second attesting witness of the agreement to sell is Rajbir, the husband of the Jagmati.

Next argument of learned counsel is that agreement to sell was executed before Jagmati became owner. It would be relevant to note here that on the date the agreement to sell was executed i.e. 27.12.2005, Jagmati purchased this property through a registered sale deed. If the agreement to sell was executed before the execution of the sale deed, that would not improve the case of the defendant-appellant. As per Section 13 of the

Specific Relief Act, if the seller acquires title subsequently then the agreement holder is entitled to enforce the same even with respect to the property which has been purchased later on.

Learned counsel for the appellant has further argued that plaintiff has not pleaded the requirements of Section 41 of the Transfer of Property Act. Section 41 deals with transfer by ostensible owner. It is not a case of ostensible owner. Jagmati had become owner on the same day i.e. 17.12.2005 when the sale deed was executed. Jagmati had purchased the property for a total sum of Rs.3,86,500/- whereas she agreed to sell the property for Rs.6,20,000/-. Therefore, argument of learned counsel for the appellant, does not have any substance.

Last submission of learned counsel is that the agreement to sell is not entered in the register/note book maintained by the scribe.

In view of the overwhelming evidence available on the file to prove the agreement to sell including the thumb impression of Jagmati, her husband and the evidence of the stamp vendor, mere failure of scribe to make an entry of the agreement to sell in his register, the agreement to sell is a contract in writing cannot be ignored.

Taking into consideration the facts and circumstances of the case and particularly the finding of fact arrived at by the Courts below, this Court does not find any good ground to interfere in the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

15.11.2017

Dinesh Bansal

Whether speaking/reasoned
Whether Reportable

(ANIL KSHETARPAL)
JUDGE

Yes / No
Yes / No