

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.5207 of 2017 (O&M)

Date of Decision: November 17, 2017

Lakshmi Narang alias Lakshmi Chandna

...Appellant

Versus

Siri Ram & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Tushar Sharma, Advocate,
for the appellant.

AMIT RAWAL, J.

Appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts and law, whereby Civil Suit bearing No.234 of 2002 titled as “Lakshmi Narang @ Lakshmi Chanda Versus Siri Ram & others” for declaration along with consequential relief of permanent injunction, mandatory injunction and possession of the suit property has been dismissed by both the Courts below.

Appellant-plaintiff preferred the aforementioned suit seeking setting-aside of the sale deed dated 14.3.2002 executed and registered in favour of defendants No.1 to 4 qua the house in question with consequential relief of injunction on the premise that she retired as a Government Teacher and was having two sons and three daughters. She is the owner of House No.18(5/18), situated in Ashoka Colony, opposite Police Lines, Karnal by virtue of a Civil Court decree dated 31.3.1990. The house was constructed by the plaintiff, which has now been demolished by defendants No.1 to 4

and the entire malba had been taken away. The sale was without consideration and the amount mentioned in the sale deed was never received by the appellant-plaintiff. The suit aforementioned was contested by the defendants by filing a joint written statement.

Mr.Tushar Sharma, learned counsel for the appellant-plaintiff submitted that both the Courts below have committed illegality and perversity in arriving at a finding that whether the sale consideration was passed on to the appellant-plaintiff before the execution of the sale deed or not. There is a specific recital that the sale consideration had been passed on to the appellant in front of the witnesses. For proving the same, the appellant herself stepped into the witness box as PW-1 and despite extensive cross-examination, the defendants failed to extract anything contrary to what has been stated in the examination-in-chief.

He further submitted that the sale deed was witnessed by four witnesses and one of them was produced by the appellant as PW-2. The said witness was cross-examined at length, but again the defendants could not extract anything contrary. On the other hand, the respondents-defendants examined three witnesses, out of which one was official witness from the office of Sub-Registrar and the other was the deed writer, who drafted the sale deed. Both the witnesses simply stated that no sale consideration was passed on in their presence. He relied upon the statements and cross-examination of DW-1 and DW-2, which have been annexed as Annexures A-5 and A-6 with the grounds of appeal.

It was also stated that one of the purchaser, namely, Satish Kumar stepped into the witness box to prove the contents of the sale deed and stated that an amount of ₹6.00 lacs was paid to the appellant-plaintiff at

her house on 14.3.2002 in the morning, but when asked about the denomination of the notes, he feigned ignorance, which completely demolished the case of the respondents-defendants. The Courts below swayed away by the allegations against the appellant-plaintiff about her and her son's conduct and, thus, deviated from the main issue. The contents of the sale deed have not been proved on record, especially the fact with regard to the sale consideration. The Courts below failed to take into considerations that the statements made by the respondents-defendants before the police were at variance and, thus, the following substantial question of law arises for determination:-

- a) Whether the Courts below failed to appreciate the effect of Section 61 of the Indian Evidence Act with regard to the contents of the sale deed dated 14.3.2002?

I have heard the learned counsel for the appellant-plaintiff and appraised the paper book.

No sane person would execute the sale deed without sale consideration. The sale deed has been duly registered in the office of the Sub Registrar and the photographs of the vendor and vendee also appeared thereon. If at all, the appellant-plaintiff had any grievance with regard to the non-payment of the sale consideration, she could not have come forward for execution of the sale deed. In such cases, adverse inference can always be drawn until and unless proved contrary.

When specifically asked whether any criminal proceedings in this regard were initiated, the answer was that same was found to be not correct and even the private complaint had also not been filed. No documentary evidence has been placed on record to establish that some

fraud was played upon the appellant-plaintiff and, therefore, the case could fall within the parameters as specified by the Legislation under Order 6 Rule 4 CPC.

In my view, the ingredients of Order 6 Rule 4 of the Civil Procedure Code have not been proved. Mere non-remembering of the denomination of the money would not be fatal to the case of the respondents-defendants. The entire onus was upon the appellant-plaintiff to prove that the sale deed was without sale consideration in the absence of any cogent and direct evidence. The appellant-plaintiff relied upon the alleged weak wicket of the defendants, which is not correct appreciation of law. Findings of both the Courts below are based upon the preponderance of the evidence.

In view of what has been noticed above, the findings of the Courts below cannot be faulted with. No ground for interference is made out, much less any substantial question of law arises for determination.

Resultantly, the appeal is dismissed.

November 17, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No