

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

RSA No.2633 of 1993 (O&M)

Date of decision : 16.01.2018

Kamla Devi and others

...Appellants

Versus

Sh. Vidyarthi Lal Gupta and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Navin Mahajan, Advocate for the appellants.

Mr. Anish Setia, Advocate with
Mr. Surinder Singh, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

CM No.543-C of 2018

Application is under Order 22 Rule 3 CPC for bringing on record the legal heirs of appellant No.2-Parveen Kumar.

Application is supported by an affidavit. Application is allowed, subject to just exceptions. Legal heirs of appellant No.2-Parveen Kumar as mentioned in para No.2 of the application are ordered to be brought on record, for the purpose of prosecuting the present appeal only.

CM No.4018-C of 1993

Application has been filed under Section 151 CPC for producing additional evidence by summoning Parma Nand son of Faquir Chand and other witness so as to prove the agreement to sell dated

15.09.1986.

In the present case, learned trial Court vide order dated 10.10.1988, allowed the defendants-appellants to prove the agreement dated 15.09.1986 by way of secondary evidence. Thereafter, the defendants-appellants were given four opportunities to lead evidence. Some evidence was led by the defendants. It is the case of the defendants that the agreement to sell dated 29.08.1985 was superseded by another agreement dated 15.09.1986. The defendants have been granted sufficient opportunities to prove the existence and genuineness of the agreement dated 15.09.1986. Before the first Appellate Court, the defendants-appellants filed an application under Order 41 Rule 27 CPC so as to produce the register of the Scribe to prove the entry of agreement dated 15.09.1986. The First Appellate Court dismissed the application after noticing that the Scribe has already been examined as DW2 and he denied having scribed the agreement dated 15.09.1986.

In view thereof, this Court does not find any good ground to allow the application for production of the additional evidence, at this stage.

Application is dismissed.

Main Case

The legal heirs of defendant No.2-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiff had filed a suit for specific performance of the agreement to sell dated 29.08.1985 for sale of House No.26, Mohalla No.15, situated at Jalandhar Cantt. It was pleaded case of the plaintiff that on

receipt of ₹50,000/-, out of the total sale consideration of ₹1,00,000/-, agreement to sell was executed and the target date for execution and registration of the sale deed was 30.09.1986.

The plaintiff pleaded that he was always ready and willing to perform his part of the contract. However, the defendants refused to perform their part of the contract.

In the written statement, the defendants did not dispute the execution of the agreement to sell. However, pleaded that there was another agreement dated 15.09.1986, whereby previous agreement to sell dated 29.08.1985 was cancelled.

Both the Courts below after appreciation of the evidence available on the file have returned a finding that the defendants failed to prove the agreement dated 15.09.1986. The defendants-appellants even examined Scribe of the alleged agreement dated 15.09.1986 as DW2 who denied having scribed such agreement.

Before the trial Court, original agreement dated 15.09.1986 was not produced. The defendants-appellants filed an application for leading secondary evidence which was allowed on 10.10.1988. In spite thereof, the defendants prove the agreement dated 15.09.1986.

Before the First Appellate Court, the defendants-appellants filed an application for additional evidence with a prayer to permit the defendants-appellants to produce the register of the Scribe who had scribed the agreement dated 15.09.1986. The First Appellate Court after giving cogent reasons rejected the application.

I have heard the learned counsel for the parties at length.

Learned counsel for the appellants at the outset has filed a list of questions of law, which are extracted as under:-

- “1. Whether the plaintiff could file a suit on the basis of agreement dated 29.8.1985, Ex.PW3/1 when the said agreement was superseded by another agreement dated 15.9.1986 Ex.DY, which stands proved by the statement of Des Raj DW3 and Purshotam Lal DW-4, regarding executing of document dated 15.9.1986?*
- 2. Whether the Lower Court has wrongly observed that it is not the case of the defendants in the written statement that plaintiff received Rs.50,000/- as advance money on 15.9.1986, in the written statement filed in para 4, it has been specifically mentioned that earnest money was paid to the plaintiff on 15.9.1986 when the new agreement dated 15.9.1986 was executed?*
- 3. Whether the plaintiff was ready and willing to perform his part of contract from the date of filing of the said suit?*
- 4. Whether the photocopy of the execution making his presence before the Sub Registrar on 30.9.1986 could be taken into consideration as photocopy is not admissible in evidence as PW4/1?*
- 5. Whether the suit filed by the plaintiff against minor Vandana was maintainable?*
- 6. Whether the Court was justified in dismissing the application u/s 65/66 of the Evidence Act for producing the agreement dated 15.9.1986 Ex.DY admittedly the original of the same was with the plaintiff?”*

Learned counsel for the appellants has argued that in the interest of justice, application under Section 151 CPC for additional evidence should be allowed. He has submitted that the defendants-appellants were very fair and admitted the execution of the agreement to sell

dated 29.08.1985 but pleaded that the aforesaid agreement to sell dated 29.08.1985 stands superseded by the agreement dated 15.09.1986.

This Court has already discussed the application for additional evidence. The appellants want to now produce the oral evidence to prove the existence of the agreement dated 15.09.1986. The defendants have already examined the Scribe who has denied having scribed the agreement dated 15.09.1986. The defendants have also examined DW4 Parshotam Lal, the alleged witness on 15.09.1986. In view thereof, the prayer of the appellants for additional evidence cannot be allowed.

This Court has considered the questions of law as proposed by the learned counsel for the appellants. However, this Court is of the considered opinion that the questions of law as framed do not arise in the present case. In fact, the questions which have been framed are all questions of fact based upon the appreciation of the evidence.

Both the Courts below have already examined the case and found that the plaintiff was always ready and willing to perform his part of the contract and it was the defendants who refused to perform their part of the contract.

With regard to question No.5, it may be noticed that originally the suit was filed against Parmanand and Nand Kishore. During the pendency of the suit, Nand Kishore died and his legal heirs were brought on record. Vandana @ Bandana, minor daughter of Nand Kishore was brought on record through her mother as natural guardian. The mother has already defended the suit and failed. There are no allegations that the natural heir did not defend the suit properly.

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

Regular Second Appeal is dismissed.

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

16.01.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No