

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.852 of 1995 (O&M)

Date of Decision: 11.05.2018

Dhanwant Kaur and another

..... Appellants

Versus

Jagir Kaur and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Anshul Gupta, Advocate, for
Mr. Saurabh Arora, Advocate
for the appellants.

Mr. Divanshu Jain, Advocate
for respondent No.1.

Mr. B.L. Gupta, Advocate
for respondent No.2.

ANIL KSHETARPAL, J.

This appeal was filed in the year 1995 through late Sh. T.P. Singh, Advocate. Subsequently, on 08.03.2018, Sh. Saurabh Arora, Advocate appeared when the case was listed for final hearing and sought an adjournment which was granted and the case was adjourned to 17.04.2018. Sh. Saurabh Arora, had filed Vakalatnama (Power of Attorney) on behalf of the legal heirs of the appellants. On 17.04.2018, the case was adjourned on the written request to 30.04.2018. Today, counsel for the appellants has made a statement that he has no instructions on behalf of the appellants. The appellants are in the knowledge of the pending appeal and have not come forward to assist the Court. This Court noticing these facts reserved the judgment on 30.04.2018 and proceeds to record its judgment.

Defendants-appellants are in the regular second appeal against the concurrent finding of fact arrived at by the Courts below. Parties are closely related as the respondent-plaintiff, Jagir Kaur is widowed daughter-in-law of Dhanwant Kaur, appellant. Whereas Surjit Kaur, defendant No.2 is second daughter-in-law of defendant No.1 whereas Khajan Singh, defendant No.3 is maternal uncle of Surjit Kaur, defendant No.2 (daughter-in-law of Dhanwant Kaur). Dhanwnat Kaur, defendant No.1 entered into an agreement to sell with widowed daughter-in-law with respect to land measuring 20 kanal on 13.05.1985 for a total sum of Rs.30,000/- out of which Rs.20,000/- was received as earnest money. As per the agreement to sell, the sale deed was to be executed and registered on 17.05.1985 which was extended with mutual consent to 26.02.1986. On 26.02.1986, the plaintiff went to the office of Sub-Registrar but defendant No.1 did not come present. Plaintiff issued notice and thereafter filed a suit for specific performance of the agreement to sell. In the written statement, execution of the agreement to sell was denied. It was pleaded that defendant No.1 has sold the land measuring 2 kanals and 18 marlas to defendants No.2 and 3 for a sum of Rs.27,000/-. Another sale deed was executed on 10.03.1986. The plaintiff filed the suit for specific performance on 20.03.1986. In order to prove the execution of the agreement to sell, both marginal witnesses i.e. Assa Singh and Jaswant Singh were examined as PW-4 and PW-5. Scribe was also examined as PW-2 and another witness Pritam Singh was also examined. On appreciation of the evidence, trial Court after recording a finding that the agreement to sell and the payment of earnest money has been proved, decreed the suit. The first appeal preferred by defendants No.1 and 2 was also dismissed after re-appreciation of evidence available

on the file. Learned First Appellate Court has noticed the evidence in detail and on appreciation of evidence, upheld the judgment and decree passed by the learned trial Court.

Since counsel for the appellants had pleaded no instructions, therefore, this Court has gone through the grounds of appeal. It has been submitted that in Khasra No.280, Bawa Varinder Singh has constructed a house and is residing therein. It has further been submitted that Dhanwant Kaur was an illiterate lady and therefore, entire onus lay on the plaintiff. It has further been pleaded that the plaintiff herself has sold two acres of land and therefore, she wants to grab the property.

As noticed earlier, the parties are closely related. Plaintiff-respondent is a widowed daughter-in-law of Dhanwant Kaur, the executant of the agreement to sell. The agreement and payment of earnest money have been proved on file. Smt. Dhanwant Kaur has denied agreement to sell. Although after entering into agreement to sell, she further extended the date for execution and registration of the sale deed from 17.05.1985 to 26.02.1986. It is thereafter defendant No.1 had some change of mind and therefore, transferred the property in favour of defendant No.2 and 3 vide sale deed dated 05.03.1986 and 10.03.1986. The contentions as raised in the grounds of appeal do not impress this Court. This Court while adjudicating upon a regular second appeal is not required to re-appreciate the evidence unless there is substantive mis-reading or non-reading of evidence available on the file. Dhanwant Kaur is alleged to be an illiterate lady. She had not entered into an agreement to sell with a stranger but her widowed daughter-in-law, thereafter, she extended the date also for execution and registration of the sale deed. Hence, illiteracy of Dhanwant

Kaur would not absolve her or her legal heirs from enforcing the agreement to sell. Still further, some construction on the land which is an undivided share would not also absolve Dhanwant Kaur from specific performance of the agreement to sell. Another ground taken in the grounds of appeal is that the price of the property was much more than what was agreed to be sold. No evidence in this regard has been led.

In view of the discussion made above, the judgments passed by the Courts below are upheld and the regular second appeal is dismissed.

11.05.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No