

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 04.12.2018

1. RSA No.759 of 2010 (O&M)

Banwari Lal

..... Appellant

Versus

Vidhya Devi and another

..... Respondents

2. RSA No.667 of 2010 (O&M)

Banwari Lal

..... Appellant

Versus

Vidhya Devi and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ajay Jain, Advocate
for the appellant (in both cases).

Mr. Sanjay Mittal, Advocate
for respondent No.1 (in both cases).

ANIL KSHETARPAL, J. (ORAL)

Vide this judgment, I shall be disposing of two appeals bearing RSA No.759 of 2010 and RSA No.667 of 2010, although, arising from separate suits, however, between the same parties with regard to same property in dispute. RSA No.759 of 2010 is arising from a suit for specific performance of the agreement to sell whereas RSA No.667 of 2010 is arising from the suit for injunction.

Plaintiff-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while dismissing

the suit for specific performance of the agreement to sell dated 04.10.1994. Parties to this litigation are closely related as late Sh. Umrao was uncle of Banwari Lal. Umrao was not having any male child, only two daughters. Banwari Lal claims an agreement to sell dated 04.10.1994 in his favour allegedly executed by late Sh. Umrao with respect to the land measuring 20 kanals and 16 marlas for Rs.1,45,000/-, out of which, Rs.1,20,000/- was paid as earnest money in cash. As per agreement to sell, the target date for execution and registration of the sale deed was fixed as 30.06.1997.

The defendants contested the suit and pleaded that since Umrao had died and he has not left behind any male heir, hence, the effort of the plaintiff is to grab the property left behind by late Sh. Umrao. It was pleaded that no agreement to sell was executed by late Sh. Umrao.

After appreciating the evidence available on the file, both the Courts have recorded a finding that the agreement to sell, specific performance whereof has been sought, is surrounded by various circumstances which prove that the agreement to sell is not a genuine document. Learned trial Court has given as many as nine different reasons for disbelieving the document i.e. agreement to sell. No doubt, in one or two grounds, the trial Court has gone over board, however, that would not take away the correctness of the various other reasons given by the trial Court.

Learned First Appellate Court once again on re-appreciation of evidence has found that the agreement to sell is not a genuine document. Some of the reasons may be noticed as under:-

1. The property is situated in village Khatoli Ahir, Tehsil Narnaul, District Mahendergarh whereas agreement to sell is alleged to

have been executed at Jaipur (Rajasthan).

2. The plaintiff has stated that the agreement to sell was scribed by Mahesh Chand Sharma, Advocate at Jaipur. However, Mahesh Chand Sharma when appeared in evidence has stated that he is not scribe of the agreement but it was in fact Sat Narain who has typed the agreement to sell. Sat Narain has not been examined.

3. Even with respect to passing of consideration, Mahesh Chand Sharma has stated in examination-in-chief that Rs.1,20,000/- was paid in cash, however, in the cross-examination, Mahesh Chand Sharma has specifically admitted that he had not written in the agreement to sell that the payment has been made in his presence. Thereafter, he voluntarily stated that the parties had admitted before him that the amount has been paid.

4. Still further, learned First Appellate Court has found that signatures of the marginal witnesses have been placed in such a manner and rather squeezed in the last page of the agreement to sell after its attestation by Mahesh Chand Sharma. Still further, it is not explained as to why the signatures on page No.2 and page No.3 of the agreement to sell are in a manner which are obtained by the advocates normally for drafting the plaint or written statement for verification purposes. Banwari Lal who is intended purchaser has signed along side the alleged thumb impression of Umrao at every place including first page of the agreement to sell. Still further, no reason has come why after paying almost 85% of the payment, the target date for execution and registration of the sale deed was fixed after a period of more than one year and 8 months.

For the reasons stated above and for detailed reasons stated by the Courts below, this Court does not find any good ground to interfere.

Now let us take RSA No.667 of 2010. Both the Courts have concurrently found that the plaintiffs are in possession of the property and the defendant has no right, title or interest in the land. The Courts on appreciation of evidence have found that it is the plaintiffs who are in possession of the same. The relief of specific performance has already been declined above.

In view thereof and for the reasons stated above, this Court does not find any good ground to interfere.

Both the appeals are dismissed.

04.12.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

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