

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3714 of 2011 (O&M)

Date of Order:05.04.2018

Malkiat Kaur and another

..Appellants

Versus

Sardara Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S.Sandhu, Advocate,
for the appellants.

Mr. N.P.S.Mann, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

C.M.No.10569-C-2011

Prayer in this application is for condonation of delay of 55 days
in re-filing the appeal.

For reasons mentioned in the application, which is supported by
an affidavit, the delay of 55 days in re-filing the appeal is condoned.

Application is allowed.

MAIN

Plaintiffs-appellants are in the regular second appeal against the
judgment and decree passed by the learned first appellate court reversing the
judgment and decree passed by the learned trial court.

Admitted facts between the parties are that there was some oral
exchange between the plaintiffs and the defendant. Plaintiffs claim that in
the oral exchange, which is permissible in the State of Punjab, by mistake 2
biswas of land was given in excess to the defendant. It is further the case of
the plaintiffs that later on once this mistake came to notice, an agreement

was entered into on 08.10.2003, Ex.PW1/A, acknowledging the aforesaid mistake and agreeing to keep the aforesaid 2 biswas of land as a passage.

On the other hand, defendant claims that this agreement is forged and fabricated document.

Learned trial court after appreciation of the evidence available on the file, decreed the suit and held that pursuant to the agreement dated 08.10.2003, 2 biswas land, which has been assigned as per agreement dated 08.10.2003, shall be used as a passage by the plaintiffs.

Learned first appellate court has reversed the finding on the following grounds:-

- (i) the agreement dated 08.10.2003 is not registered and hence not admissible in evidence;
- (ii) the original agreement has not been brought on the file;
- (iii) the execution of the agreement dated 08.10.2003 has not been proved as the attesting witness has admitted that it was not signed by the parties in his presence.

In the considered opinion of this Court, the following substantial questions of law arise in the present case:-

- (i) Whether a agreement acknowledging a mistake in the oral exchange is required to be compulsorily registered under Section 17 of the Registration Act in the State of Punjab?
- (ii) Whether the finding of the learned first appellate court that the original agreement dated 08.10.2003 is against the record?
- (iii) What is the effect of an attesting witness making a

statement that the executant had not signed in his presence particularly when the document is not required to be attested by attesting witnesses and it is proved that the executant had signed the document? ?

Now the stage is set for answering the questions of law framed earlier.

QUESTION NO.(i)

Whether an agreement acknowledging a mistake in the oral exchange is required to be compulsorily registered under Section 17 of the Registration Act?

It is not disputed before this Court that in the State of Punjab oral exchange is permissible for exchange of the immovable property as the relevant provision of the Transfer of Property Act i.e. Section 118 has not been extended to the State of Punjab. Once the oral exchange is permitted and the error in the oral exchange which was sought to be rectified, in the considered opinion of this Court, would not result in transfer of title. The agreement further provides that the aforesaid 2 biswas land shall be utilised by the plaintiffs for exchange.

Learned first appellate court has committed an error in ignoring the agreement between the parties on the ground that the aforesaid document has not been registered under the Indian Registration Act and, therefore, neither admissible in evidence nor it can be considered as conferring any title in the immovable property valuing more than Rs.100/-. As noticed earlier there was an error in the oral exchange which was corrected by a subsequent agreement admitting the error/mistake in the oral exchange. Such document cannot be considered as a document of title transferring immovable property for more than Rs.100/-. The title already

vested with the plaintiffs. The mistake in oral exchange was acknowledged and therefore, such acknowledgment does not result in transfer of the title in the immovable property for more than Rs.100/-.

In the considered opinion of this Court, there was no transfer of title and hence the document was not required to be compulsorily registered.

Hence, question no.(i) is answered in favour of the appellants.

QUESTION NO.(ii)

Whether the finding of the learned first appellate court that the original agreement dated 08.10.2003 is against the record?

On careful perusal of the file, proves that the original agreement entered into between the parties is Ex.PW1/A at page 40 of the trial court record. Counsel for the respondent also admitted this fact.

Hence, question no.(ii) is also answered in favour of the appellants.

QUESTION NO.(iii)

What is the effect of an attesting witness making a statement that the executant had not signed in his presence particularly when the document is not required to be attested by attesting witnesses and it is proved that the executant had signed the document?

Learned first appellate court was much impressed by the statement of Manvir Singh, a marginal witness, who was examined as PW3, has stated that the defendant has not signed the agreement in his presence. First of all agreement is not required to be attested by the attesting/marginal witnesses. The law does not require that the agreement is necessarily required to be attested by the marginal witnesses. Secondly, plaintiff Malkiat Kaur has appeared in the evidence. Two marginal witnesses,

namely, Manvir Singh and Jasvir Singh have been examined. If one of the attesting witness has made a statement that the defendant did not sign in his presence, that would not invalidate the agreement. The agreement is signed by the defendant. No evidence has been produced on record by the defendant to prove that it does not bear his signatures. The agreement runs into two pages. Both the pages have been signed by Sardara Singh, defendant-respondent. In the absence of any evidence to prove otherwise, learned first appellate court committed an error in recording a finding that the agreement dated 08.10.2003, Ex.PW1/A is not proved on the file.

Hence, question no.(iii) is also answered in favour of the appellants.

In view of the aforesaid finding, the judgment and decree passed by the learned first appellate court is reversed and that of the trial court is restored.

The regular second appeal is allowed.

April 05, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No