

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 3160 of 2016(O&M)

Date of Decision: 13.8.2018

Nirmala Devi

---Appellant

versus

Rajinder Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Vishal Sodhi Advocate
for the appellant**

Rekha Mittal, J.

CM No. 8474-C of 2016

Prayer in this application is for condoning delay of 17 days in
refiling the appeal.

Allowed as prayed for. Delay of 17 days in refiling the appeal
stands condoned.

Disposed of accordingly.

RSA No. 3160 of 2016

The present appeal directs challenge against concurrent
findings recorded by the courts whereby suit for declaration and permanent
injunction filed by respondent-plaintiff Rajinder Singh was partly decreed
to the effect that respondent No. 2 i.e. Oriental Bank of Commerce, Chappar
Branch, Village Chappar Tehsil and District Patiala has full liberty to

recover their amount from the suit land, equitably mortgaged by appellant-defendant No. 1 in favour of defendant No. 2 in the year 2005 but the respondent-plaintiff was declared to be absolute owner in possession of house constructed on plot measuring 150 square yards on the basis of registered sale deed dated 24.8.2006. The appeal preferred by Nirmala Devi defendant No. 1 (appellant herein) did not find favour with the Additional District Judge, Patiala.

Counsel for the appellant would urge that Nirmala Devi appellant was proceeded against ex parte at one point of time but later she was allowed to join the proceedings. The trial court in exercise of its discretion allowed her to appear in the witness box. She has deposed on oath that the sale deed propounded by the plaintiff-respondent is a forged document and respondent is not entitled to seek declaration qua his ownership of the suit house. With regard to entitlement of the appellant to examine herself as a witness even without filing the written statement, counsel has referred to judgment of Hon'ble the Supreme Court **Sangram Singh vs. Election Tribunal Korah and another 1955(2) SCR 1**. Further reference has been made to judgment of this Court **Joginder Singh vs. Baldev Singh and another 1985 RLR 287**. It has been argued that the trial court while dealing with issues No. 1 and 2 jointly has held that the plaintiff cannot take plea that he is a bona fide purchaser of the suit property. It has been noticed by the court that non-production of original sale deed in the court raises serious suspicion regarding intention of the plaintiff and it is clearly discernible from the facts and circumstances of the case that he (plaintiff) was in knowledge of this fact that defendant No. 1 had already equitably mortgaged the suit land in favour of defendant No. 2,

thus, defendant No. 2 has full liberty to recover their due amount from the suit land. It is argued that as the trial court has negated plea of the respondent-plaintiff with regard to his being a bona fide purchaser of the suit property, the same should be construed against the respondent-plaintiff to reject his claim that he is owner in possession of the suit house. It is further argued that on the basis of a cumulative view of the findings recorded by the trial court coupled with statement of the appellant that sale deed in question is the result of fraud, judgments and decrees passed by the courts cannot be allowed to sustain.

I have heard counsel for the appellant, perused the paper book and judgments impugned.

The respondent-plaintiff filed suit for declaration and permanent injunction primarily to stake his claim that Oriental Bank of Commerce is not entitled to recover any amount from the house in question on the basis of loan raised by Nirmala Devi, previous owner as the plaintiff was not aware of the house being equitably mortgaged with the bank and under some liability. The trial court, on a detailed consideration of materials on record, negated plea of the respondent-plaintiff that he was not aware of the factum of loan having been raised by previous owner of the suit house as original sale deed of the house in question was not produced by the respondent-plaintiff and the same was in possession of the bank since the year 2005 as Nirmala Devi created equitable mortgage qua the house in question for securing loan from the bank. The finding is only with regard to the respondent-plaintiff being not entitled to take the plea of bona fide purchaser in order to avoid liability of payment of loan from the house in question but no such finding has been recorded by the trial court that

transaction between the plaintiff and defendant No. 1 is not genuine much less the sale deed is the result of fraud. In this view of the matter, the appellant cannot derive any advantage to her contention from the findings recorded by the trial court in a different context to negate plea of the respondent-plaintiff that the bank is not entitled to recover the outstanding loan from the house in question.

Admittedly, Nirmala Devi was proceeded against ex parte but later she was allowed to join proceedings. She did not file the written statement to controvert the allegations raised in the plaint much less to raise a plea that sale deed propounded by the respondent-plaintiff is the result of fraud. As per the settled position in law, if a person challenges a document/transaction on the ground of fraud, it is obligatory that he must state the facts constituting fraud and thereafter prove the same akin to a criminal charge.

In the case at hand, Nirmala Devi did not file the written statement. She certainly cannot stand at a better footing viz-a-viz a person who had taken the plea of fraud. The self serving statement of Nirmala Devi is not at all sufficient to prove that sale deed propounded by the respondent-plaintiff is the result of fraud warranting intervention in consistent findings of fact recorded by the courts below. I would hasten to add that consistent findings of fact recorded by the courts call for interference only if they suffer from perversity or raise a question of law. The appellant has failed to bring forth any convincing materials to satisfy this court that judgments suffer from perversity or a question of law emerges that needs determination in the regular second appeal.

For the foregoing reasons, the appeal fails and is accordingly

dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

13.8.2018

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No