

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

RSA No.2181 of 2015 (O&M)

Date of decision : 16.05.2018

Phoolan Devi

...Appellant

Versus

Mahabir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Vashisth, Advocate with
Mr. Keshav Partap Singh, Advocate and
Mr. Neeraj Goyal, Advocate for the appellant.

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

Mr. Bhisham Kumar Majoka, Advocate for respondent No.3.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.2-appellant, a purchaser, is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiff filed a suit for specific performance of the agreement to sell dated 27.01.2005 with the assertions that the land measuring 41 kanals and 3 marlas was agreed to be sold by defendant No.1 for a total sale consideration of ₹20,50,000/-, out of which ₹4,50,000/- was paid as earnest money. As per the agreement to sell, sale deed was agreed to be executed and registered on 27.07.2005. The plaintiff claims that he visited the office of Sub-Registrar with the balance sale consideration,

however, defendant No.1 did not come forward. He marked his presence by swearing an affidavit getting it attested from Executive Magistrate-cum-Sub-Registrar.

The suit was filed on 09.08.2005. Defendant No.1 pleaded that the agreement to sell is antedated and it has been procured in collusion with defendant No.3, nephew of defendant No.1. It is claimed that he is issueless and, therefore, defendant No.3 had a evil eye on his property and hence, he was kidnapped on 08.07.2005 and certain blank papers were got thumb marked and even photograph was affixed. He further claimed that under the agreement to sell dated 27.01.2005, no earnest money was paid. Defendant No.2, appellant pleaded that defendant No.1 had executed agreement to sell with son of defendant No.2 i.e. Rajesh on 21.03.2005 for land measuring 41 kanals 3 marlas for total sale consideration of ₹25,00,000/- out of which ₹2,50,000/- was paid as earnest money. It is further pleaded that as per the agreement to sell, sale deed was to be executed on 30.09.2005. In fact, son of defendant No.2 filed a suit on 19.07.2005 and on notice, defendant No.1 executed the sale deed in favour of mother of Rajesh i.e. defendant No.2 on 28.07.2005 and thereafter the suit was withdrawn by Rajesh on 20.08.2005.

Both the Courts below on appreciation of the evidence available on the file, have decreed the suit filed by the plaintiff after recording a finding that defendant Nos.1 and 2 have colluded and they wanted to defeat the rights of the plaintiff. The Court noticed that none of the marginal witness of the agreement to sell propounded by defendant No.2 dated 21.03.2005 has been examined in evidence. The Court has further noticed that the scribe of the agreement to sell dated 21.03.2005 has not

been examined also. The Courts have further noticed that defendant No.1 even before appearance in the suit filed by son of defendant No.2 conceded his case and got the sale deed registered.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the record.

Learned counsel for the appellant-defendant No.2 submitted that the jamabandi which has been produced on file by the plaintiff is dated 03.08.2005 issued by the Patwari. Hence, he submits that the agreement to sell dated 27.01.2005 is proved to have been antedated.

He further submitted that the sale deed has been executed in favour of defendant No.2, therefore, the sale deed registered in his favour should not be disturbed. He has further submitted that the possession of the land is with defendant No.2 and, therefore, agreement to sell in favour of the plaintiff is not a genuine document.

This Court has considered the submissions. However, do not find any substance therein. It is not in dispute that defendant No.1 before appearing in the suit filed by Rajesh son of defendant No.2 got the sale deed registered. That itself proves that defendant Nos.1 and 2 are colluding. Still further, on the one hand, defendant No.1 has claimed that he is issueless, however, he has tried to use all possible means to defeat the rights of the plaintiff. If defendant No.1 wanted to sell the property then he had already entered into an agreement to sell with the plaintiff on 27.01.2005. He should have honoured that agreement to sell.

This Court has also closely examined the agreement to sell

dated 27.01.2005 Ex.P1 and receipt of the same Ex.P2. The aforesaid agreement to sell bears not only thumb impressions of defendant No.1 but also his signatures. The photograph of defendant No.1 also affixed thereon. Both the pages have been signed and thumb marked by defendant No.1. From careful examination of the aforesaid agreement to sell, it is not established that this agreement to sell was scribed on blank papers later on as is being claimed by defendant No.1. Still further, Ex.P2 is the receipt of ₹4,50,000/-. Again, defendant No.1 has not only signed but also thumb marked on the revenue stamp which is placed in such a manner that it cannot be on a blank paper. Still further, two photographs of defendant No.1 have been affixed and one of the photograph bears the thumb impressions of defendant No.1, thumb impression has been put in a manner that some part of it is on the photograph and remaining is on the receipt. Similar is the position on page 1 of the agreement to sell.

The argument of the learned counsel for the appellant with regard to the possession also does hold any ground because in the agreement to sell dated 27.01.2005, it was the plaintiff who was put in possession of the property. It is specifically recorded in the aforesaid agreement to sell. A look at the photographs shows that defendant No.1 does not appear to be old. Story put forth by defendant No.1 that he was kidnapped has not been proved on file.

For the reasons recorded above, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

It would be necessary to note here that defendant No.2 would

join defendant No.1 in execution of the sale deed. Defendant No.2 would be at liberty to request the Executing Court to keep the amount to be deposited by the plaintiff in a fixed deposits. Defendant No.2 would also be at liberty to file a suit for recovery of the amount.

Regular Second Appeal is dismissed.

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

16.05.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No