

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Regular Second Appeal No. 3987 of 2016(O&M)

Date of Decision: August 21 , 2018.

Subhash Gupta and another

..... APPELLANT (s)

Versus

Ram Lal Kataria @ Ram Lal

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Surinder Sharma, Advocate
for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

The appellants-defendants are aggrieved of the judgments and decrees dated 30.04.2013 and 24.08.2015 passed by the learned Civil Judge (Junior Division), Hoshiarpur and the learned District Judge, Hoshiarpur, respectively. Suit filed by the respondent-plaintiff seeking recovery of ₹1,24,500/- was decreed to the extent that he is entitled to recover ₹50,000/- as the principal amount with interest at the rate of 6% per annum w.e.f. 05.05.1998 to 05.10.2010, besides, future interest at the rate of 6% w.e.f. from the date of institution of the suit till the actual realization of the decretal amount. Appeal filed by the appellants-defendants was also dismissed by the learned District

Judge, Hoshiarpur.

Brief facts necessary for adjudication of the case are that, the a suit for recovery of the abovesaid amount was filed by the respondent-plaintiff while pleading that land measuring 14-½ marlas out of the total land measuring 47 kanals 18 marlas as described in the plaint was sold by him to the appellants-defendants vide sale deed dated 04.05.1998 for a sale consideration of ₹3,77,000/-. At the time of the execution of the sale-deed, a civil suit No.258/20.8.1997 for possession by way of partition filed by some of the co-sharers, namely Gurbachan Singh son of Achar Singh and others against the respondent-plaintiff and other co-sharers in respect to the whole land measuring 47 kanals 18 marlas was pending. Due to the pendency of the said civil suit, a separate agreement (Ikrarnama) (Ex.P3) was entered into between the parties. A sum of ₹50,000/- was kept out of the total sale consideration of ₹3,77,000/- as surety with a condition that appellant No.1 shall pay the sum of ₹50,000/- alongwith interest to the respondent-plaintiff in case the plaintiff succeeds in the civil suit upto the Hon'ble Supreme Court. It is further mentioned in the terms and conditions of the agreement (Ex.P3) that in case the abovesaid civil suit is decided against the plaintiff, appellant No.1 would have a right to forfeit the said sum of ₹50,000/-. If both the appellants suffered any loss regarding the property in dispute which was purchased vide sale deed dated 04.05.1998, then respondent-plaintiff would be liable to pay the damages personally or through his property. It is further submitted that the suit for possession by way of partition which was filed by one of the co-sharers Gurbachan Singh son of Achar Singh against the respondent-plaintiff and other co-sharers in respect to the land

measuring 47 kanals 18 marlas was dismissed by the learned trial court vide judgment and decree dated 06.09.2005 by the learned Civil Judge (Junior Division), Hoshiarpur. Appeal filed by Gurbachan Singh son of Achar Singh was also dismissed by the learned Additional District Judge, Hoshiarpur vide judgment dated 23.11.2009. No appeal was preferred against the said judgments and decrees by Gurbachan Singh and other co-sharers. Thus, judgment and decree dated 23.11.2009 attained finality, therefore, the appellants-defendants were bound to pay ₹50,000/- alongwith interest in terms of agreement dated 05.05.1998. However, the appellants/defendants refused to deposit the said amount hence, suit was filed.

The present appellants-defendants contested the suit and filed written statement taking various preliminary objections, besides, denying the averments on merits. It was stated that the entire consideration amount had been handed over to the respondent-plaintiff at the time of agreement to sell dated 13.10.1997 and the execution of the sale-deed dated 04.05.1998. The agreement dated 05.05.1998 (Ex.P3) was stated to be forged and fictitious. Replication was filed by the respondent-plaintiff.

The following issues were framed by the learned trial court on the basis of pleadings of the parties:-

- “1. Whether the plaintiff is entitled to recovery ₹50,000/- as principal amount and ₹74,500/- as interest from 05.05.1998 to 05.05.2010 from the defendants?OPP
2. Whether the plaintiff is entitled to future interest if so at what rate?OPP
3. Whether the suit of the plaintiff is not within limitation?OPD
4. Whether the suit is not maintainable?OPD

5. Whether the suit is bad for mis-joinder and non-joinder of necessary parties?OPD

6. Relief.”

Both the parties led evidence to substantiate their case. The learned trial court after considering the evidence on record, facts and circumstances of the case, held that agreement dated 05.05.1998 (Ex.P3) was duly proved on record. It was held that the respondent-plaintiff is entitled to recover ₹50,000/- as a principal amount and the interest thereon as detailed in the foregoing paras. Suit was accordingly decreed to that effect vide judgment and decree dated 30.04.2013. Appeal filed by the appellants-defendants against the said judgment and decree was dismissed by the learned District Judge, Hoshiarpur vide judgment and decree dated 20.08.2015. Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellants vehemently argues that both the learned courts below have grossly erred in allowing the suit filed by the respondent-plaintiff. There is a complete misreading of the evidence on record. It is contended that there was no question of entering in any agreement with the plaintiff on 05.05.1998 once the sale-deed had been executed on 04.05.1998. Moreover, the factum of ₹50,000/- not being paid to the vendor does not find mention in the sale-deed dated 04.05.1998. In case any such rider had been imposed or sum of ₹50,000/- was kept as security, the same would necessarily be mentioned in the sale-deed itself. It is submitted that it was for the respondent-plaintiff to have proved agreement dated 05.05.1998 in accordance with law, especially once the appellants claimed the documents in question to be the result

of fraud and forgery. It is thus prayed that this appeal be allowed. Judgments and decrees dated 30.04.2013 and 24.08.2015 passed by the learned courts below be set aside and suit filed by the respondent/plaintiff be dismissed.

I have heard learned counsel for the appellants and have perused the file.

There is no dispute regarding the sale of land measuring 14-½ marlas out of the total land measuring 47 kanals 18 marlas as described in the plaint by the respondent-plaintiff vide sale-deed dated 04.05.1998 (Ex.P1) in favour of the appellants-defendants for a sale consideration of ₹3,77,000/-. The appellants have also not denied the factum of pendency of litigation in respect to the suit property between the respondent-plaintiff and other co-sharers at the time of execution of sale-deed dated 04.05.1998. Learned counsel for the appellants further does not dispute that judgments and decrees dated 06.09.2005 and 23.11.2009 in a suit titled as 'Gurbachan Singh son of Achar Singh v. Ram Lal Kataria and others' have attained finality. The learned trial court has rightly held that the appellants-defendants in their written statement denied the very existence of agreement (Ex.P3), whereas in their evidence it was stated that the said agreement dated 05.05.1998 is a result of fraud and signatures of appellant No.1 may have been taken on some blank papers on 04.05.1998 itself in connivance with the stamp vendor.

Respondent-plaintiff examined PW2 Dharminder, deed-writer who has deposed about the execution of the agreement (Ex.P3) by the appellants out their own free will and consent. He has deposed about the contents of the agreement, which was read over to the appellants. PW3 Joginder Pal, one of the

attesting witness of the said agreement deposed regarding the execution of the same by the appellants out of their own free will and consent and the said agreement bears the signatures of appellant No.1-Subhash Gupta.

It is relevant to note at this stage that the appellants set up a plea of forgery and fabrication of the said document. However, no such evidence has been led by the appellants to substantiate their contention regarding forgery or fraudulent nature of the said agreement. The learned trial court has discussed in detail the various factors which lend credence to the plaintiff's case.

Another argument raised by learned counsel for the appellants, that Ex.P3 bears only the signatures of appellant No.1-Subhash Gupta i.e., one of the vendees of the sale-deed therefore, there can be no recovery against the other appellant-defendant, is devoid of any merit and hence rejected. Appellants-defendants are admittedly married to each other. Sale-deed dated 04.05.1998 also bears the signatures of Subhash Gupta, appellant No.1. Therefore, presence of signatures of Subhash Gupta alone on the agreement (Ex.P3) in fact lend credence thereto.

No other argument has been raised.

Learned counsel for the appellants-defendants is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the learned courts below have returned concurrent findings of fact after proper appreciation and consideration of the evidence on record.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and

decrees dated 30.04.2013 and 24.08.2015 passed by the learned Civil Judge (Junior Division), Hoshiarpur and the learned District Judge, Hoshiarpur, respectively, which warrant any interference by this Court.

There is a delay of 134 days in refiling and nine (9) days in filing of the appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing and refiling of this appeal has been rendered academic. Applications are accordingly disposed of.

Present appeal is, consequently, dismissed with no order as to cost.

August 21 , 2018.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No