

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.6143 of 2016 (O&M)

Date of Decision: May 11, 2018

Vijay Rani

...Appellant

Versus

Shakti Parshad & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Sunil Garg, Advocate,
for the appellant.

AMIT RAWAL, J.

CM No.16161-C of 2016

For the reasons mentioned in the application, which is supported by an affidavit, delay of 23 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.6143 of 2016

Appellant-plaintiff is aggrieved of the concurrent findings, whereby the suit seeking declaration for deleting the name of defendant No.1 in the sale deed bearing Vasika No.7439 dated 26.9.2007 with rectification by omitting his name and granting declaration that the plaintiff is absolute owner in possession of house measuring 150 sq.yards, situated in Mohalla Jaurian Bhatian Patiala with consequential relief of permanent injunction seeking restraint against defendant No.1 and his agents from dispossessing and interference, much less alienation, has been partly decreed by the trial Court and affirmed by the Lower Appellate Court.

Mr.Sunil Garg, learned counsel for the appellant-plaintiff

submitted that the suit aforementioned was filed averring therein that Rattan Chand, husband of the plaintiff died in November, 2005 leaving behind plaintiff, four daughters and one son. Plaintiff, being a rustic villager, was not aware of the rules and regulations in title deed of the property left by her husband, whereas other family members promised to help her. Defendant No.1 Shakti Parshad, brother of deceased who was residing at Patiala, used to come in the village to assist the plaintiff and her children. In the month of November, 2006, defendant No.1 searched a house, which was on sale and showed it to the plaintiff. The sale price was settled by defendant No.1 with defendant No.2 owner of house as ₹7,30,000/-. Plaintiff agreed to sell her house constructed in the land measuring 225 sq.yards in Village Lang to one Satpal Singh for a sum of ₹3,90,000/- and in lieu thereof, executed an agreement to sell. Another property measuring 72.8 sq.yards was sold to Satpal Kaur, Harmit Kaur and Manjit Kaur for a consideration of ₹2,50,000/-. Defendant No.1 used to get all the papers regarding the sale and purchase scribed. Besides the aforementioned payment which plaintiff received after selling two properties, she withdrew ₹1,00,000/- from the bank on 24.9.2007 and also sold gold ornament for ₹1,00,000/-. The plaintiff paid a sum of ₹7,30,000/- to defendant No.2 as sale price of the suit property and also paid ₹70,000/- to defendant No.1 for the purchase of stamp papers. Defendant No.1 got the sale deed scribed before reaching of the plaintiff in the office of Sub Registrar. Plaintiff got astonished when her daughter, after reading the sale deed, told her that defendant No.1 was mentioned as co-owner to the extent of half share in the suit property. It is in these circumstances, the suit aforementioned was filed, for, defendant No.1 had played a fraud upon the plaintiff.

The aforementioned suit was contested by defendant No.1 by filing written statement, wherein preliminary objection qua maintainability besides other objections was taken. It was stated that the plaintiff was aware of the above said legal heirs of Suraksha Rani and in order to grab the share of Suraksha Rani forged and fabricated a Will dated 20.12.2002 of Suraksha Rani. Whenever the plaintiff felt necessity for the help of defendant No.1, on each occasion defendant No.1 extended help by visiting the house. The sale price of the house in question was settled by the plaintiff and defendant No.1 with defendant No.2 with the intervention of Raj Kumar. The sale deed was executed in the presence of Sub Registrar, who read over the contents of the sale deed in the presence of the plaintiff and defendant No.1, much less the marginal witness. The suit was also barred by law of limitation.

The trial Court, on the basis of the aforementioned pleadings, framed the following issues:-

- “i) Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP*
- ii) Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
- iii) Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- iv) Whether the plaintiff has no cause of action to file the present suit? OPD*
- v) Whether the suit is time barred? OPD*
- vi) Whether the plaintiff has no locus standi to file the present suit? OPD*
- vii) Relief.”*

He submitted that the Courts below have erroneously dismissed the suit as a fraud and misrepresentation had been played upon the plaintiff.

The Courts below are basing their judgments and decrees on the Will dated 20.12.2002 of Suraksha Rani, whereas the said Will had no nexus with the suit property. It was an independent transaction. Once the entire payment was paid by the plaintiff, there was no occasion for incorporating the name of defendant No.1 showing him to be co-owner. He had parted with the sale consideration, for, the sale deed had been signed by the appellant and only the appellant was present in the office of Sub Registrar and, thus, urged this Court for setting-aside the findings under challenge.

I have heard the learned counsel for the appellant-plaintiff, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel, for, the sale deed is of 2007, whereas the suit was filed in the year 2012. For all this period, no explanation has come forth for not availing the remedy. The alleged accrual of cause of action in the month of November, 2005 is an afterthought, for, the defendant has parted with the money. It cannot be believed that the contents of the sale deed were not read over or were not in the knowledge. The plaintiff is not able to prove the entire payment of ₹7,30,000/-, thus, failed to discharge the onus. At the best, the remedy was to seek partition, for, both the parties, i.e., plaintiff and defendant No.1 were co-sharers.

For the reasons stated above, the concurrent findings of fact and law arrived at by the Courts below do not call for any interference, much less any question of law arises for determination.

Resultantly, the appeal is dismissed.

May 11, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No