

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

**RSA No.684 of 2016 (O&M)
Date of Decision:14.09.2018**

KAMLA AND ANOTHER

.....Appellants

Vs

UDEYBIR

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Mahender Singh Chahal, Advocate
for the appellants.

RAJ MOHAN SINGH, J.

[1]. Defendants are in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below.

[2]. Brief facts of the case are that the plaintiff filed a suit for seeking possession by way of specific performance of agreement to sell dated 22.08.2006 which was executed by defendant No.1 in his favour in respect of 8 *Kanals* 0 *Marla* of land. Defendant No.2 was owner in possession of the suit land. Defendant No.2 had sold the land in question to defendant No.1 vide sale deed dated 20.02.2006. On 28.02.2006, defendant No.1 entered into agreement to sell with the plaintiff for total sale consideration of Rs.3,20,000/-. An amount of Rs.2,00,000/-

was paid as earnest money and 15.03.2007 was fixed as target date for execution of sale deed. Possession of the land was delivered to the plaintiff. Defendant No.1 did not turn up on the target date for registration of the sale deed, rather she had executed sale deed dated 14.02.2007 in favour of defendant No.2 for sale consideration of Rs.2,20,000/-. Mutation No.2866 was also sanctioned in pursuance of the aforesaid sale deed dated 14.02.2007. Plaintiff challenged the sale deed as well as mutation in the suit.

[3]. In the written statement filed by defendant No.1, a plea was taken that the plaintiff availed a loan from Haryana Khadi Mandal for the business of oil speller. Defendant No.1 stood surety for him and in that process her signatures were obtained and agreement to sell was the resultant effect of that signatures. No earnest money was paid to her. Defendant No.1 filed a counter-claim seeking compensation of special costs under Section 35-A CPC.

[4]. Perusal of the record would show that the execution of agreement to sell was proved before the trial Court with reference to scribe and attesting witnesses and other witnesses. Before the lower Appellate Court, an application was filed under Order 41 Rule 27 CPC for seeking permission to produce affidavit of PW-8 Sube Singh, who was examined as witness by

the plaintiff before the trial Court. Sube Singh was the attesting witness of the agreement dated 22.08.2006 Ex.P-2. Before the trial Court, he supported the case of the plaintiff. Before the lower Appellate Court, his affidavit was sought to be pressed into service in order to show that such agreement to sell was fraudulent. The lower Appellate Court dismissed the aforesaid application along with appeal by holding that the witness by giving affidavit to the defendants has taken U-turn and was won over.

[5]. Defendant No.1 could not prove the allegations of fraud pleaded by her. The plea of the defendants that the agreement to sell was not proved for want of independent witness was negated by the Courts below with reference to the statements of PW-2 Sanjay, who had scribed the agreement to sell Ex.P-2.

[6]. The due execution of agreement to sell was proved by PW-1 Mahender, who deposed that on 22.08.2006, defendant No.1 had purchased stamp paper from him and he had entered the same at Serial No.935 dated 22.08.2006 in his Register. Kamla had put her thumb impression on his register. The entry of register was proved by way of exhibiting the same as Ex.P-1.

[7]. The scribe of the agreement to sell i.e. PW-2 Sanjay had also deposed that the agreement to sell was scribed on the

asking of Kamla in respect of 8 *Kanals* 0 *Marla* of land. The witness had proved his signature on the original agreement to sell Ex.P-2. The agreement to sell was witnessed by Balbir Singh, Namberdar and Sube Singh, who had put their signatures as attesting witnesses. The land in question was agreed to be sold for a consideration of Rs.3,20,000/- and Udeybir had paid an amount of Rs.2,00,000/- as earnest money to Kamla and a receipt was executed to that effect by Kamla by affixing her thumb impression on the receipt Ex.P-3. The witness had proved entry in the register as Ex.P-4.

[8]. The plaintiff himself appeared as PW-6 and corroborated the material facts. Ramphal was examined as PW-7, who is cousin brother of husband of Kamla. The witness had specifically stated that in order to avoid sale deed in favour of the plaintiff, Kamla in collusion with defendant No.2 got the sale deed executed in his favour whereas no such transaction had taken place between the defendants.

[9]. Sube Singh was examined as PW-8, who proved the agreement to sell in the capacity of attesting witness. Shamsheer Singh Malik, Handwriting and Fingerprint Expert was examined as PW-9, who had compared the disputed thumb impressions of Kamla on agreement to sell Ex.P-2 and receipt Ex.P-3 with her standard thumb impressions appearing on affidavit dated

23.08.2011, with the statement dated 13.02.2012 recorded in the Court and specimen sheet dated 04.10.2012. The witness vide his report Ex.PW-9/B had opined that the thumb impressions marked as Q-1 to Q-3 tallied with standard thumb impressions marked as S-1 to S-4 of Kamla.

[10]. The witnesses were duly cross-examined, but nothing incriminating could be extracted from their lengthy cross-examination by the defendants. Both the Courts below have appreciated the material on record and have concluded in favour of the plaintiff while decreeing the suit.

[11]. The finding of fact recorded by the Courts below cannot be held to be on account of misreading of evidence or suffered with any perversity. No question of law worth consideration is involved in the present appeal and same is accordingly dismissed in *limine*.

September 14, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No