

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1232 of 2018 (O&M)
Dated of decision:21.11.2018

Harbans Kaur

....Appellant

Versus

Baljeet Kaur and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present:- Mr. Vikram Anand, Advocate for the appellant.

LISA GILL, J.

CM No.3093-C of 2018

Prayer in the application is for permission to make good deficiency in court fee. Deficient court fee stands deposited though after the stipulated time.

In view of the facts and circumstances of the case, time to affix the same is extended till then.

Application is disposed of.

RSA No.1232 of 2018

The plaintiff/appellant is aggrieved of judgments and decrees dated 03.11.2015 and 06.02.2017 passed by learned Civil Judge (Junior Division) and Additional District Judge, Kapurthala respectively. Suit for declaration filed by the plaintiff claiming to be owner in possession of the property, as detailed in the suit, as well as declaration that sale deed dated 18.08.2008 is null, void, forged and fabricated, besides permanent injunction and rendition of accounts was dismissed. Appeal filed by him was dismissed as well.

Brief facts necessary for adjudication of the case are that the plaintiff claimed to be the owner of the suit property. Defendant No.2

Ravinder Singh was stated to be son of the other two defendants. Plaintiff claimed that she was in need of money, therefore, she approached defendant No.3 for a loan. Loan was agreed to be given to the plaintiff and defendant No.3 obtained signatures of the plaintiff on blank papers. Loan amount was returned by the plaintiff but documents bearing signatures of the plaintiff were not returned. Later the plaintiff came to know that a power of attorney was fraudulently drawn up on the said documents in favour of defendant No.2 Ravinder Singh. Sale deed dated 18.08.2009 was executed in favour of defendant No.1. It was averred that in case power of attorney holder of the plaintiff i.e. defendant No.2 Ravinder Singh is proved to have validly executed sale deed dated 18.08.2009, the sale proceeds thereof should be handed over by defendant Ravinder Singh to the plaintiff, as he did not furnish any accounts to the plaintiff. Defendants were sought to be restrained from dispossessing the plaintiff from the suit property.

Suit was resisted by the respondents/defendants, who filed written statement taking various preliminary objections and contesting the averments on merits. It was submitted that sale deed dated 18.08.2009 was validly executed and registered before the Sub Registrar, Kapurthala. At the time of execution of the sale deed, the plaintiff pleaded and requested for retaining possession of the house on rent for some time. Prior to the execution of the sale deed, agreement to sell dated 01.04.2005 had been executed by the plaintiff for a total sale consideration of Rs.5,35,000/-. Full and final consideration under the agreement to sell had been received by her. Possession was also delivered to the purchaser under part performance thereof. It is specifically mentioned in the said agreement to sell that the plaintiff had executed a General Power of

Attorney in favour of defendant No.2 Ravinder Singh and that she had no right over the suit property after execution of the agreement to sell dated 12.04.2005 and after the receipt of full and final sale consideration. Dismissal of the suit be prayed for.

From the pleadings of the parties, following issues were framed:-

- “1. Whether the plaintiff is entitled to the relief of declaration, as prayed for? OPP
2. Whether the sale deed dated 18.08.2009 is null and void, forged and fabricated documents? OPP
3. Whether the plaintiff is entitled to the alternative suit for rendition of accounts from defendant No.2, as prayed for? OPP
4. Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for? OPP
5. Whether the plaintiff is entitled to seek accounts from the defendant No.2 if so what amount the plaintiff is entitled to get recovered from defendant No.2? OPP
6. Whether the plaintiff has got no locus standi or cause of action to file the present suit? OPD
7. Whether the plaintiff is estopped by her act and conduct from filing the present suit? OPD
8. Whether the plaintiff has not come to the court with clean hands and has suppressed the real facts from the Court? OPD
9. Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction? OPD

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

11. Relief.”

Evidence was led by both the parties to substantiate their respective stand. Learned trial Court, while concluding that the plaintiff/appellant failed to prove her case, dismissed the suit filed by her. Appeal filed by the plaintiff was also dismissed by the learned Additional District Judge, Kapurthala, vide judgment and decree dated 06.02.2017.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that passing of consideration in this case has not been proved. Reference is made to the cross examination of DW1 Jasbir Singh, defendant/respondent No.3 to contend that the sale transaction is not reflected in his income tax returns. It is submitted that in this view of the matter, suit filed by the plaintiff has been wrongly dismissed. Learned counsel contends that the plaintiff has proved her case on the basis of clear and cogent evidence on record which has been wrongly ignored by both the learned Courts below. It is, thus, prayed that this appeal be allowed, the impugned judgments and decrees dated 03.11.2015 and 06.02.2017 be set aside consequently decreeing the suit filed by the plaintiff/appellant.

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

The case set up by the plaintiff is that she never executed sale deed dated 18.08.2009 in favour of defendant No.1 through her power of attorney holder. It is contended that she had approached defendant/respondent No.3 for a loan, which was indeed given to her. At that stage, she was made to sign some blank papers. Loan amount was

returned by the plaintiff, but she did not receive the documents which were got signed from her. It is averred that it is on these blank papers, which were signed by her, that forged and fabricated documents of the sale deed etc. had been prepared. Further prayer set forth by the plaintiff is that in case sale deed dated 18.08.2009 is proved on record, she is entitled for recovery of the consideration amount from the power of attorney Ravinder Singh. She sought rendition of accounts as well. It is pertinent to note at this stage that the appellant has not challenged either the General Power of Attorney Ex.DX/2 executed by her in favour of defendant No.2 Ravinder Singh, neither has she challenged the agreement to sell dated 12.04.2005 Ex.DX/1 in respect to the land in question. There is not an iota of evidence on record to reflect as to whether any loan was ever taken by the plaintiff from respondent No.3. Furthermore, there is nothing on record to prove that the amount in question (which is also not specified) was ever returned, as to when, where and how it was returned. No such details are forthcoming even in the plaint filed by the plaintiff/appellant.

Ex.DX/2, the General Power of Attorney, is a registered document which was executed in the year 2005. Agreement to sell dated 12.04.2005 has also not been challenged by the plaintiff. The suit in question was filed in May 2010. There is no explanation as to why the plaintiff did not take any steps for cancellation of the General Power of Attorney or in respect to the agreement to sell for five long years. At this stage it is relevant to note that Ex.DW/2A i.e. the rent note/kirayanama has also been proved on record. There is no evidence on record to prove that the said documents executed in favour of the respondents are forged, fraudulent and fabricated ones. Therefore, I do not find any merit in the arguments raised on behalf of the appellant.

No other argument has been raised.

There is a delay of 232 days in re-filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in re-filing this appeal has been rendered academic. Said application is accordingly disposed of.

Learned counsel for the appellant-plaintiff 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 impugned judgements are well reasoned and rendered 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 03.11.2015 and 06.02.2017 passed by the learned Civil Judge (Junior Division) and learned Additional District Judge, Kapurthala, respectively, which warrant any interference by this Court.

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

**(LISA GILL)
JUDGE**

November 21, 2018
Ishwar

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