

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

RSA No.1973 of 2018(O&M)

Date of decision: 24.4.2018

Smt. Prem Lata and anotherAppellants

VERSUS

Sandeep KumarRespondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vaneet Soni, Advocate for the appellants.

REKHA MITTAL, J.

CM No.5919-C of 2018

Heard.

Allowed as prayed for.

CM No.5920-C of 2018

Heard.

Allowed as prayed for.

Annexures A-1 to A-10 are taken on record subject to just exceptions.

Disposed of accordingly.

RSA No.1973 of 2018

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for specific performance of agreement to sell dated 31.01.2011 in respect of 1/4th share out of 68 kanals 3 marlas situated within revenue estate of village Ateli, Tehsil Narnaul, District Mohindergarh filed by the respondent/plaintiff was decreed by the trial Court vide judgment and decree dated 28.05.2015 and

the appeal preferred by the unsuccessful defendants/appellants did not find favour with the Additional District Judge, Narnaul.

In short, the respondent/plaintiff filed suit on the averment that the appellants/defendants agreed to sell the suit land for sale consideration of Rs.25,50,000/- and executed the agreement dated 31.01.2011 whereby the earnest money of Rs.22,50,000/- was paid by the respondent to the appellants. The sale deed was agreed to be executed and registered on or before 30.01.2012. The respondent always remained ready and willing to perform his part of the agreement. He served legal notice dated 17.01.2012 and remained present in the office of Registrar on the target date i.e. 30.01.2012. Another legal notice dated 02.02.2012 was served calling upon the appellants to get the sale deed registered by appearing in the office of Registrar on 15.02.2012 but the appellants failed to respond.

The appellants/defendants filed the written statement and in turn raised preliminary objections inter alia cause of action; locus standi and maintainability of the suit in the present form. They denied execution of agreement dated 31.01.2011, receipt of earnest money or liability to execute the sale deed in favour of the respondent. It is averred that Sarvan Devi, appellant No.2 is a Parda Nashin lady and is a widow. Appellant No.1 is married at Khorl in Rajasthan. Appellant No.2 had been reposing confidence in the respondent who used to visit her. The respondent advised her to partition the joint khewat and took the appellants to office of Registrar Ateli and got their signatures in some register on the pretext that application for partition has been filed. The agreement is stated to be based upon fraud, cheating and misrepresentation.

The trial Court framed issues reproduced in para 6 of the judgment of trial Court and permitted the parties to adduce evidence in support of their respective claims. After having heard counsel for the parties in the light of materials on record, the trial Court accepted claim of the respondent qua the agreement in question and his having remained ready and willing to perform his part of the agreement. As has been noticed hereinbefore, findings of the trial Court were affirmed in appeal.

Counsel for the appellants would urge that the agreement in question was procured by the respondent/plaintiff taking undue advantage of illiteracy of the appellants. It is argued that though Prem Lata has admitted her signatures on the agreement but she has explained that she does not know how to read and write except putting her signatures. The other appellant is a parda nashin lady and for that reason she even did not appear in the witness box to counter case of the respondent/plaintiff.

The second submission made by counsel is that it has been proved on record as admitted by the stamp vendor that the stamp paper were purchased for the purpose of power of attorney but the same has been used for preparing agreement of sale. It is argued with vehemence that if the appellants had agreed to execute an agreement of sale in favour of the respondent, there was no reason for them to purchase a stamp paper of Rs.100/- which was otherwise meant for the purpose of power of attorney. In addition, it is argued that both the attesting witnesses of the agreement are closely related to the respondent/plaintiff and there are material contradictions in their statements sufficient to prove that their testimonies are not worthy of reliance and credence. Counsel would point out that in the agreement, the words 'Ikraarnama Be (agreement of sale)' and two

more lines have been typed on the stamp of Rs.100/- affixed on the first page of the document which also creates doubt qua genuineness and validity of the agreement of sale.

I have heard counsel for the appellants, perused the paper-book, particularly the judgments impugned and documents Annexure A-1 to A-10.

Before advertng to the submissions made by counsel for the appellants, it is pertinent to note that in the Regular Second Appeal, evidence cannot be re-appreciated to record a finding different from what has been consistently held by the Courts. Equally settled is that second appeal can be admitted for hearing if the judgments suffer from perversity or raise a question of law that needs determination after notice to the contesting party.

Reverting to the case at hand, the respondent/plaintiff examined Narender Kumar, Advocate Notary Public PW-1, Dinesh Kumar, Registration Clerk PW-2, Lal Singh, Stamp Vendor PW-3, Satender Kumar son of Banwari Lal one of the attesting witnesses of the agreement PW-4, Om Parkash son of Babu Lal, another attesting witness of the agreement PW-5, Sandeep Kumar – plaintiff/respondent PW-6, Dinesh Kumar, Advocate, PW-7. To rebut evidence of the respondent/plaintiff, Prem Lata- appellant herself appeared in the witness box.

The civil disputes are decided on the basis of preponderance of probabilities. The appellants filed joint written statement and denied agreement with the plea that the same is result of forgery, fraud, cheating and misrepresentation. It is averred that as the respondent/plaintiff was a

man of confidence of Smt. Sarvan widow of Subhash Chand, he took the appellants to Tehsil Office on the pretext of getting the joint khewat partitioned and get their signatures/thumb impressions in registers. The fact that Smt. Sarvan had gone to Tehsil office for filing an application for partition negates her plea that she is a parda nashin lady. The appellants cannot justify non-examination of Smt. Sarvan on the pretext of her being a parda nashin lady. That being so, an adverse inference is liable to be drawn against the appellants for non-examination of Smt. Sarvan. This apart, Prem Lata one of the appellants appeared in the witness box and in her cross examination, she stated that agreement bears her signatures. Once Prem Lata has admitted her signatures on the agreement, law imposes an obligation upon such a litigant to prove the circumstances under which his/her signatures were obtained on the document. As the appellants have not raised a plea that their signatures/thumb impressions were obtained on a blank paper much less a stamp paper, appellants have miserably failed to rebut the evidence adduced by the respondent to prove the agreement of sale. As it is none of the plea of appellants that agreement has been prepared on blank signatures/thumb impressions of the appellants, the appellants cannot seek any advantage to their contention that the stamp paper was purchased for the purpose of power of attorney or two lines of the agreement are typed on the stamp affixed on first page of the agreement.

I have gone through testimonies of Satender Kumar PW-4 and Om Parkash PW-5, attesting witnesses of the agreement but unable to find that the same suffer from any material discrepancy in order to find fault in the judgments passed by the Courts. I would hasten to add that in cross

examination of Satender PW-4, counsel for the appellants confronted the witness with photocopy of a document marked DA to say that the same does not bear his signatures nor writing in hand with regard to receipt of sum of Rs.22,50,000/- by Prem Lata and Sarvan Devi. It is not understandable that if the agreement was not executed by the appellants, how could they be in possession of photocopy mark DA purported to be prepared before Satender Kumar signed the same as an attesting witness and made endorsement (handwritten) qua receipt of money by the proposed vendors. This fact also falsifies and belies contention of the appellants that the agreement was prepared by way of forgery/cheating after getting signatures/thumb impressions of the appellants in some register(s) on the pretext of filing an application for partition of joint khewat. Even otherwise, there is nothing on record suggestive of the fact that Smt. Prem Lata daughter of Smt. Sarvan Devi had any dispute with regard to the land being joint or they had any intention to get the joint khata partitioned.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine. No order as to costs.

APRIL 24, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no