In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:3.7.2018

RSA No. 2471 of 2018(O&M)

Dakhan now deceased through LR

---Appellant

vs.

Rukma Devi and another

---Respondents

RSA No. 2572 of 2018(O&M)

Dakhan now deceased through LR

---Appellant

vs.

Kamla Devi and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. D.S.Virk, Advocate
for the appellant in both the appeals

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Rekha Mittal, J.

This order will dispose of RSA Nos. 2471 and 2572 of 2018 as identical questions of law and fact are involved for adjudication. For the sake of convenience, facts are taken from RSA No. 2471 of 2018.

The sole submission made by counsel for the appellant is that as Ms. Dakhan (since deceased) stood in a fiduciary relationship or relationship of confidence with the respondents, it was an obligation of the respondents/defendants to prove that the deed is free from undue influence and the transaction is fair and honest. In this context, reliance has been placed upon judgment of Hon'ble the Supreme Court **Krishan Mohan Kul alias Nani Charan Kul and another vs. Pratima Maity and others 2003 (3) PLR 757.** In the alternative, it is argued that Ms. Dakhan was an illiterate and Pardanashin lady, therefore, there is a legal obligation of the respondents/defendants to prove that the transactions are free from undue influence, misrepresentation etc. For this purpose, reference has been made to judgment of the Allahabad High Court **Hakimuddin vs. Mohammad Anis 1998(2) Civil Court Cases 366.**

Before adverting to the submissions made by counsel for the appellant, it is appropriate to note material facts from the judgment passed by the trial court. The appellant (since deceased) now represented by her legal representative claimed herself to be owner in possession of land measuring 16 kanals, detailed in para 1 (unnumbered) of the judgment by assailing sale deed bearing No. 2499 dated 18.12.2002 to be the result of fraud, misrepresentation and without consideration. It is averred that the appellant constructed a dhani in Rect. No. 791 killa No. 2/1(7-12) and is residing there alongwith Kesra Ram, her son. She took loan of Rs. 42,000/- from the Dabwali Primary Co-operative Agricultural and Rural Development Bank Limited, Dabwali in the year 1994 and installed a tube well in Killa No. 5 with the said amount. She took a loan of Rs. 71,000/- from respondent No. 2 and the same was deposited with the bank to clear the debt. She was unable to return the amount of Rs. 71,000/- and respondent No. 2 asked her to mortgage land measuring 2 acres out of land measuring 133 kanal 4 marlas for clearance of the amount taken by her as loan. She agreed to the said proposal and mortgaged the said property in favour of Kamla Devi, wife of respondent No. 2. The mortgage deed dated 28.8.2002 was not read over to her and she did not receive Rs. 1,22,000/- from Kamla Devi as mortgage money. In December 2002, respondent No. 2 asked the appellant that killa numbers have not been mentioned in the mortgage deed, therefore, the mortgage deed is to be amended. On that pretext, respondent No. 2 and his wife Kamla Devi took the appellant to the office of Sub Registrar, Dabwali and her thumb impressions were taken on certain documents. In the month of March 2012, the appellant asked the defendants to redeem the mortgage but they told her that defendants are owners of the suit property and the appellant is not entitled to redeem the same. The respondents admitted claim of the appellant in panchayat but later did not honour their commitment. The appellant is an old pardanashin lady and hard of hearing. The sale deed is the result of fraud and liable to be set aside. The price of the land is more than Rs. 20 lakhs per acre and, therefore, the impugned transaction is not at all conscionable.

So far as contention of the appellant by relying upon Section 111 of the Indian Evidence Act, 1872 (in short “the Act”) and judgment of Hon'ble the Supreme Court **Krishan Mohan Kul alias Nani Charan Kul and another's case (supra),** Section 111 of the Act is applicable when a person is in fiduciary relationship with another and the latter is in position of active confidence, burden of proving absence of fraud, misrepresentation or undue influence is upon the person in the dominating position and he has to prove that there was fair play in the transaction or to say that the transaction is genuine and bonafide. This rule applies equally to all persons standing in confidential relations with each other such as agents, trustees, executors, administrators, auctioneers etc.

Counsel for the appellant has failed to advance any arguments much less meaningful that there was fiduciary relationship or relationship of active confidence between the appellant and the respondents in order to attract the provisions of Section 111 of the Act or to contend that the Court has wrongly framed issue No. 1 and placed its onus upon the appellant/plaintiff.

This brings the Court to the plea that the appellant was a pardanashin lady and is entitled to protection. This plea of the appellant gets falsified and belied from the averments raised in the plaint. As per case set up by the appellant, she constructed a dhani in killa No. 2/1, raised a loan of Rs. 42,000/- from the Dabwali Primary Co-operative Agricultural and Rural Development Bank Limited, Dabwali in the year 1994, installed a tube well in killa No. 5 with the said amount, borrowed an amount of Rs. 71,000/- on different dates from respondent No. 2, deposited the said amount with the bank to clear her outstanding liability and executed mortgage deed dated 28.2.2002 in favour of Kamla Devi wife of respondent No.2. All these facts are sufficient to negate plea of the appellant that she is a pardanashin lady and entitled to any such protection in order to press that it was obligatory for the respondents to prove that the appellant executed the sale deed out of her free will after understanding the import of transaction.

This apart, the respondents examined one of the attesting witnesses of the sale deed. He was subject to cross examination at length.

At one place, he has deposed that the he does not know about the sale deed but knows about the mortgage deed. As per the settled position in law, statement of a witness is to be read as a whole for appreciation of evidence in right perspective. Equally settled is that picking up a single sentence from the testimony and using the same for or against a party, divorced of remaining testimony, may lead to travesty of justice. In the given scenario, the appellant cannot derive advantage of the aforesaid single sentence from the testimony of Bahadur Ram to seek reversal of consistent findings recorded by the courts when otherwise, intervention is warranted only if the findings suffer from perversity or a question of law is raised and answered in favour of the appellant. Analyzed from any angle, I do not find any merit in contentions of the appellant.

For the foregoing reasons, the appeals fail and are accordingly dismissed in limine with no order as to costs.

(Rekha Mittal)
Judge

3.7.2018
paramjit

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