

In the High Court of Punjab and Haryana at Chandigarh

**RSA-4892 of 2017(O&M)
Date of Decision: 6.10.2018**

Harminder Kaur through her LRs

---Appellants

versus

Ajit Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Sandeep Bansal, Advocate
for the appellants**

Rekha Mittal, J.

CM No. 12889-C of 2017

Heard.

Allowed as prayed for. Deficiency in the court fee is made up.

Disposed of accordingly.

CM No. 12891-C of 2017

Heard.

Allowed as prayed for. Persons mentioned in para 2 of the application are allowed to be brought on record as legal representatives of Harminder Kaur, appellant No. 1 (since deceased), subject to just exceptions, for the purpose of present lis.

Disposed of accordingly.

RSA- 4892 of 2017

The present appeal directs challenge against the judgment and

decree dated 28.11.2016 passed by the Additional District Judge, Hoshiarpur whereby appeal preferred by the respondents-defendants against the judgment and decree dated 6.9.2012 passed by the trial court allowing specific performance of agreement of sale dated 24.7.1990 was accepted, judgment and decree passed by the trial court were set aside and suit filed by Harminder Kaur and others, successors in interest of late Sukhdev Singh for specific performance of the aforesaid agreement has been dismissed.

Counsel for the appellants-plaintiffs would urge that the agreement of sale between Sukhdev Singh and Ajit Singh, real brothers was executed on 24.7.1990. At the time of execution of agreement, the entire sale consideration of Rs. 14,000/- was paid by Sukhdev Singh to Ajit Singh and the sale deed was agreed to be executed after decision of partition proceedings. Sukhdev Singh passed away on 8.3.2001. The appellants-plaintiffs served legal notice dated 28.10.2003 calling upon the respondents-defendants to execute the sale deed but the same was received back with the report 'out of station'. Immediately thereafter, the appellants filed the suit in April 2004. It is vehemently argued that Dalel Singh, another brother of Ajit Singh and Sukhdev Singh was an attesting witness to the agreement of sale. He appeared in the witness box and admitted his signatures on agreement Ex. P1 but as he was won over by the defendants-respondents, he failed to support cause of the appellants-plaintiffs. The appellants could not examine the other attesting witness and scribe of the agreement as they had died, therefore, Dalel Singh cannot be allowed to ransack the agreement duly executed by Ajit Singh.

Another submission made by counsel is that in the written

statement, defendants have raised the plea that the agreement is a forged and fabricated document but they failed to substantiate their plea in this regard and the said fact also goes in favour of the plaintiffs-appellants that agreement Ex. P1 was executed by Sh. Ajit Singh. It is further argued that as the sale deed was to be executed by Ajit Singh after finalization of partition proceedings that were dismissed in default in the year 1998, Sukhdev Singh or his successors in interest cannot be condemned for their failure to file suit for specific performance immediately after dismissal of the partition proceedings more particularly in the circumstances that there is nothing on record suggestive of the fact that Sukhdev Singh had the necessary knowledge of dismissal of the partition proceedings before he died on 8.3.2001. Counsel would argue that learned trial court has appreciated testimony of Dalel Singh and conduct of the defendants that Ajit Singh transferred suit land in favour of his sons, defendants No. 2 to 4 vide three sale deeds executed in the year 1996, 1997 and 2003, in right perspective while allowing claim of the appellants-plaintiffs.

I have heard counsel for the appellants and perused the paper book particularly the judgment passed by the Court in Appeal.

Harminder Kaur, one of the LRs of Sukhdev Singh appeared in the witness box to prove their case but in cross examination, she has candidly admitted that she has no personal knowledge of document Ex. P1 as she was not present at the time when the document was executed or alleged payment of Rs. 14,000/- was made by Sukhdev Singh in favour of Ajit Singh. Dalel Singh, the attesting witness has only admitted his signatures on the agreement but failed to prove that the agreement was executed by Ajit Singh after admitting contents thereof to be correct or the

same bears signatures of Ajit Singh or/and Sukhdev Singh. The plaintiff did not examine an expert on the basis of comparison of disputed signatures of Ajit Singh with his sample/standard signatures. No doubt, even statement of a hostile witness can be taken into account but statement of such a witness needs corroboration from some other evidence. In the case at hand, Dalel Singh has only admitted his signatures on the agreement of sale but has not supported cause of the plaintiffs that agreement was executed by Ajit Singh. There is no materials available on record to corroborate testimony of Dalel Singh.

Sukhdev Singh was admittedly a party to partition proceedings. The plaintiffs have failed to produce materials on record that he was ex parte in those proceedings, therefore, could not know about dismissal of partition proceedings almost three years prior to his death on 8.3.2001. The very fact that Sukhdev Singh did not file a suit for specific performance despite having remained alive for a period of three years after the partition proceedings were dismissed in default goes a long way to create suspicion that agreement of sale was executed by Ajit Singh. Examined from another angle, if Ajit Singh could execute sale deeds in favour of his sons from the year 1996 onwards, it shows that there was no hindrance to execute the sale deed in favour of Sukhdev Singh. In view of the above, I do not find any reason to differ with findings recorded by the Appellate Court that Ajit Singh did not agree to sell the suit land in favour of Sukhdev Singh. The appellate court has rightly taken note of that the agreement even does not make mention of the total land out of which Ajit Singh agreed to sell 6 kanal of land though the same makes reference that partition proceedings are pending.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

6.10.2018
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No