110 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.583 of 2018 (O&M)
Date of decision : March 26, 2018

Shila Devi .... **Petitioner**

Versus

Late Kalam Singh (since deceased) through LRs .... **Respondent**

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Shailendra Sharma and Mr. Bishan Dass Rana, Advocates for the petitioner.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

CM-1425-C and 1426-C-2018

There is delay of 16 days in re-filing and 20 days in filing the present appeal.

For the reasons mentioned in the applications, delay of 16 days in re-filing and 20 days in filing the present appeal is condoned, subject to all just exceptions.

Applications stand disposed of.

Main case

Impugned in the present regular second appeal is the judgment dated 27.07.2017 passed by learned Addl. District Judge, Chandigarh, affirming the judgment and decree dated 28.02.2014 passed by the learned Civil Judge (Junior Division), Chandigarh, vide which the suit filed by the plaintiff-respondent was dismissed.

The plaintiff had filed a suit for declaration to the effect that she is the owner and allottee of House No.203/1 (1st Floor), LIG (L), Sector 40-C, Chandigarh. She also sued for possession and recovery of ₹54,000/- as mesne profit an damages to the extent of ₹1,500/- per month from the date of filing of the suit till the date of handing over the possession. She also claimed the future mesne profit and permanent injunction restraining the defendants from handing over the possession of the said house to anyone.

The facts of the case as claimed by the plaintiff are that she knew defendant Kalam Singh (since deceased) now represented by his legal heirs and his wife. The plaintiff did not know how to read and write English. In pursuance of the advertisement issued by the Housing Board, Chandigarh in the year 1987 for allotment of houses to the low income group, defendant No.1 got the required amount of ₹5,007/- and a form filled from him and got a demand draft of ₹500/- along with application. The address of defendant No.1 was given in the said application. Defendant No.1 had separately applied for the allotment of the flat in his own name. The plaintiff and her husband were residing at Village Kishangarh. In the year 1980, the husband of the plaintiff got a job in a farm house at Sarai Nagar, District Muktsar Sahib and the plaintiff along with her husband shifted there. Defendant No.1 had approached the plaintiff and told that the price of the house has increased to ₹5,400/-. Therefore, she handed over the said amount to him. It is further claimed that dwelling unit was allotted to her in the year 1981 and this fact was not disclosed to her.

It was further claimed that defendant No.1 had been letting the said dwelling unit to the tenants from time to time and that on 20.05.1981, defendant on the pretext of filling up of the form; got the agreement to sell, the General Power of Attorney and Special Power of Attorney executed from him, which were registered on 21.05.1981. The plaintiff came to know about the said fraud in June, 1988 and filed the suit on 19.05.2001.

On the other hand, the defendant claimed that the suit is time barred. He claimed that the suit has been filed after more than 18 years. Defendant had agreed to purchase the dwelling unit for a premium of ₹5,000/- in addition to ₹5797.65 being 11/4th price of the dwelling unit. A sum of ₹5,800/- was handed over to the plaintiff by the defendant for making a demand draft of ₹5797.15. The dwelling unit was sold by the plaintiff to the defendant for a total sale consideration of ₹11,000/-. The plaintiff and defendant visited the office of the then Chairman, Chandigarh Housing Board and handed over bank demand draft of ₹5797.15, in lieu of the sale price. The parties entered into an agreement to sell dated 20.05.1981. The husband of the plaintiff Sunder Lal was the witness to the agreement to sell. Simultaneously, the possession of the dwelling unit was handed over to the defendant by the plaintiff at the time when the agreement to sell was entered. The General Power of Attorney was in favour of defendant No.1 and Special Power of Attorney was in favour of the wife of the defendant No.1 and the same were got registered in the office of Sub Registrar at Chandigarh on 21.05.1981. The plaintiff and her husband Sunder Lal and one Kanwar Singh (now dead) were witnesses to the General Power of Attorney and Special Power of Attorney and had appeared before the Registrar at Chandigarh and affirmed the said power of attorneys.

From the pleadings, following issues were framed:

"1. Whether the plaintiff is entitled for the declaration and recovery as prayed for? OPP
2. Whether the plaintiff is entitled to get the possession of House No.2031, First Floor, LIG (L), Sector 40-IC, Chandigarh? OPP.
3. Whether the plaintiff is entitled to the permanent injunction restraining the defendants from handing over the possession of the aforesaid house to anyone or to dispose of the same in any way? OPP.
4. Whether the plaintiff has not come to the court with clean hands? OPD
5. Whether the plaintiff has no cause of action? OPD.
6. Relief."

The trial Court after evaluating the evidence of both the parties, came to the conclusion that defendant was in possession of the property since 1981. The installments of the house were paid by him. The execution of the agreement and General Power of Attorney were proved. The trial Court disbelieved the story of fraud and accordingly, dismissed the suit. The said findings were upheld in appeal.

I have heard learned counsel for the appellant and have also carefully gone through the case file.

I am of the view that in the present case, both the Courts below have recorded the concurrent findings that the plaintiff has failed to prove the fraud. She does not claim that she paid anything towards the installments of the house. Though, she claimed that she had initially paid a sum of little more than ₹5,000/-. It is unlikely that from the year 1980, the plaintiff did not enquire about the said dwelling unit and payments of installments and suddenly, in the year 2001, she wakes up and realized that she is the owner of the said dwelling unit. According to her own stand, the house was given on rent to defendant and to various tenants. In the agreement, the sale consideration is recorded to have been paid to the plaintiff and her husband. In Chandigarh, since there is a bar in the allotment letter for sale of the allotted houses, therefore, there is a practice to execute the agreement; General Power of Attorney and Special Power of Attorney.

In these circumstances, there is no illegality of infirmity in the findings recorded by both the Courts below. As such, the present regular second appeal is dismissed.

Since, the main appeal has been dismissed, therefore, the pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

March 26, 2018
sarita

Whether speaking / reasoned Yes

Whether Reportable: No