

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.632 of 2018 (O&M)
Date of Decision.30.01.2018

Kanshi Ram and others

.....Appellants

Vs

Uggarsain and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ramnish Puri, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

The regular second appeal has been directed at the instance of the appellants-defendants against the concurrent finding of fact rendered by the Courts below whereby the suit seeking specific performance of the agreement to sell dated 18.04.2009 while setting aside the Release Deed Ex.DW5/A executed by defendant No.1 in favour of defendant Nos.3 to 6, has been decreed.

The aforementioned suit was instituted by the respondent-plaintiff-Uggarsain claiming specific agreement to sell *ibid* in respect of land measuring 65 kanals 12 marlas as prescribed in the plaint situated in village Makhosarani for a total sale consideration of ₹21,32,000/-. After receipt of earnest money of ₹15 lacs, the stipulated date for execution of registration of the sale deed was fixed as 25.08.2009. As per the averments in the plaint, the aforementioned agreement was witnessed by Rajender Kumar son of Prem Kumar and Subhash Chander son of Het Ram. The plaintiff stated to have marked his presence before Sub Registrar but defendant No.2 being attorney of defendant No.1-Suraswati @Surawati did not come forward and

realizing that defendant No.1 had executed a Release Deed No.145 dated 1.5.2009 in favour of defendant Nos.3 to 6, the same was challenged.

In pursuance of the notice of the aforementioned suit, defendant No.1 appeared and filed written statement taking preliminary objections qua maintainability, locus standi and concealment etc. On merit, the execution of the agreement was denied as defendant No.2 was never authorized to execute the alleged agreement to sell in favour of the plaintiff. The written statement filed on behalf of defendant No.2 was also in the same line as of defendant No.1.

Defendant Nos.3 to 6 filed a joint written statement and stated that the alleged agreement was result of collusion between the plaintiff and defendant Nos.1 and 2 as the alleged suit land was agreed to be sold at the rate of ₹2,60,000/- per acre whereas the market value of the land was ₹12,00,000/- per acre. The witnesses of the alleged agreement were men of the plaintiff and defendant No.2, therefore, prayed for dismissal of the suit.

Mr. Ramnish Puri, learned counsel appearing on behalf of the appellants-defendant Nos.3 to 6 submitted that both the Courts below committed illegality and perversity. The appellants-defendant Nos.3 to 6 had taken a specific plea that suit property was joint coparcenary property without legal necessity and therefore, the decree for specific performance could not have been passed. No specific issue with regard to the nature and character of the property being ancestral was framed, thus, the Courts below abdicated in discharging the obligation enshrined. There was a pre-existing right in the property. In order to prove the nature of the property being ancestral, an application bearing No.1576-C of 2018 has been filed to place on record mutation No.294 sanctioned on 13.01.1946 in respect of

inheritance of Mam Raj s/o Bagha as per provisions of Order 41 Rule 27 of the Code of Civil Procedure. Both the Courts below lost sight of the fact that defendant No.2 under the general power of attorney executed an agreement to sell in favour of his own man and therefore, the same was hit by Section 215 of the Indian Contract Act. The plaintiff failed to prove that no consideration was passed in favour of the defendant No.1-Suraswati @Surawati. No sane person would sell her share without obtaining any consideration. Suraswati when appeared in the witness box stated that Kulwant Singh had not disclosed to her contents of the power of attorney nor authorized him to enter into agreement to sell. Later on, she was won over by Kulwant Singh. In fact, it was Kulwant Singh, who was a tool playing in the hands of the plaintiff and wanted to deprive Suraswati-defendant No.1 and the appellants from the suit property. Civil suit declaring release deed dated 01.05.2009 as null and void was filed on 28.10.2013 wherein an application under Order 39 Rule 1 and 2 was filed which was dismissed by the trial Court on 30.01.2014, thus, urges this Court for setting aside the judgments and decrees passed by the Courts below by formulating the substantial questions of law as culled out in the memorandum of appeal.

I have heard learned counsel for the appellants and appraised the paper book. Before advertng to the submissions of Mr. Puri, I would be dealing with the application for additional evidence. Mutation as stated above is of the year 1946. The fact of the matter is that Suraswati being wife of Nathu Ram was the owner of the property whereas the appellants-defendant Nos.3 to 6 are sons of Kalu Ram. The mutation No.294 dated 13.01.1946 does not prove nature and character of the property as ancestral.

It does not co-relate whether the property agreed to be sold was same or not.

If the application for placing on record additional evidence is allowed at this stage, it would tantamount to filling up the lacunas and *de novo* trial. There was no impediment for the appellants to place and prove on record the same before the Courts below to enable them for adjudication of the controversy. The fact of the matter is that appellants-defendant No.3 to 6 failed to bring the case within the realm of expression “despite exercise of due diligence”. Resultantly, the application under Order 41 Rule 27 is hereby dismissed.

As far as merit of the case is concerned, both the Courts below have examined the evidence both oral and documentary brought on record.

The plaintiff proved on record the execution of the agreement to sell, much less, passing of the consideration through the testimony of PW-1, Rajinder Kumar, attesting witness, who identified his signatures on the agreement to sell. PW-3, Jitender Kumar, Advocate deposed that general power of attorney Ex.P3 was executed on the asking of defendant No.1 in favour of defendant No.2. The defendants examined DW-2 Kulwant Singh, DW-5 Sahi Ram and DW-6 Kanshi Ram but none of the aforementioned witnesses of the appellants-defendants brought on record any cogent evidence to point out that defendant No.2 was not competent to execute the agreement to sell or the respondent-plaintiff failed to prove the ingredients of Section 68 of the Indian Evidence Act disentitling him the relief under Section 20 of the Specific Relief Act. The payment of consideration of ₹15 lacs has also been proved. The target date was fixed as 25.08.2009 whereas the suit was filed on 04.02.2011. During all this period, there had been specific pleading that the respondent-plaintiff had been approaching defendant No.1 for execution of the agreement to sell and compelled to file the suit only when during the subsistence of the agreement to sell, defendant No.1 defeated the rights of

the respondent-plaintiff by executing a relinquishment deed in favour of defendant Nos.3 to 6. DW-1, Suraswati when appeared in the witness admitted in her cross-examination that Kulwant Singh was none else but her brother and she had full faith in him as was being looked after by him. Though the general power of attorney was cancelled later on but the fact of the matter is that there was no release deed. She also admitted her thumb impression on the written statement and general power of attorney Ex.P3. She was cross-examined by the appellants-defendant Nos.3 to 6 but did not support their case qua execution of release deed in their favour rather stated that the release deed was fraudulently executed. All this weighed in the mind of the Courts below in discarding the defence of defendant Nos.3 to 6 while decreeing the suit of the respondent-plaintiff.

As far as nature and character of the property being ancestral, as pleaded in the written statement, is concerned, I am of the view that the aforementioned argument of the counsel for the appellants rather goes against the appellants-defendants No.3 to 6 as they are claiming right and title in the property by way of release deed. The release deed did not specify that it was done out of legal necessity. It is common practice by the beneficiaries of a subsequent sale deed or release deed or of a vendor to take up all possible pleas to thwart the claim of the agreement holder/vendee for one reason or the other. In fact, such approach is not only mala fide but dishonest. The aforementioned evidence leads to irresistible conclusion that the respondent-plaintiff had proved the ingredient of Section 68 of the Indian Evidence Act and the defendants have not been able to deny the execution of the agreement to sell.

As an upshot of my finding, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below. No ground for interference is made out, much less, no substantial question of law arises for determination by this Court. Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

January 30, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No