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

**Civil Revision No.3344 of 2019 (O&M)
Date of Decision: 03.12.2019**

Nakshhattar Kaur

.....Petitioner

Vs

Resham Kaur and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Munish Gupta, Advocate
for the petitioner.

Mr. Deepak Verma, Advocate
for respondent No.1.

Mr. Subhashish Kukreti, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. Challenge is made to the order dated 24.04.2019 passed by the Civil Judge (Jr. Divn.) Garshankar vide which the application to return the affidavit tendered in the evidence being the facts beyond pleadings was dismissed.

[2]. Perusal of the record would show that additional issues No.7A and 7B were framed by the trial Court vide order dated 13.10.2018. The suit was filed by the plaintiff-petitioner and her husband Jagtar Singh against Resham Kaur and Satinder Kaur

for declaration to the effect that plaintiff No.2/petitioner is the owner in possession of the suit land on the basis of transfer deed dated 14.09.2011 executed by plaintiff No.1 in her favour and the sale deeds dated 09.09.2011 alleged to be executed by plaintiff No.1 in favour of the defendants are illegal, *sham*, bogus transaction, were without consideration and were the result of fraud. In alternative suit for recovery of the amount along with interest was also prayed.

[3]. In the evidence of defendants, defendant No.1 Resham Kaur filed her affidavit in examination-in-chief as DW-2. Para Nos.4 and 5 of the aforesaid affidavit are to the following effect:-

“4. That the amount of sale consideration was available with the deponent as she had received rent of the land owned by her husband from Kulbir Singh son of Avtar Singh resident of village Luxian amounting to Rs.10,00,000/- of three years. Deponent had also received Rs.12,50,000/- from Malkiat Singh of village Gopalian who had taken friendly loan from the deponent a year ago. Rs.2,00,000/- were withdrawn from Canara Bank Kot Fatuhi and the remaining amount was available in cash with the deponent which she and her family had brought from U.K. which was savings from the earnings of husband of the deponent and her children as well as of defendant No.2. Deponent and her family was owner of 14 acres of land since the year 2003.

5. That vendor represented to the deponent that he is going to sell his land as he intends to purchase land in Uttar Pardesh where in-laws of Jagtar Singh are settled and he told that rate of the land in Uttar Pardesh is less and by selling the land in Punjab, he will purchase much more land in Uttar

Pardesh.”

[4]. Plaintiffs filed an application to undo portion of the affidavit of defendant No.1/DW-2 by pleading the following recital in para Nos.3 and 4 of the application:-

“3. That the defendant No.1 has submitted her affidavit in the Hon'ble Court in which she has narrated in para no.4. The source of money from where she arranged the consideration mentioned in the sale deed. Similarly in para no.5 of the affidavit the defendants have narrated a fact. The purpose for which Jagtar Singh sold his land to the defendant.

4. That the defendants in their written statement have never mentioned the facts mentioned in para no.4 and 5 of the affidavit.”

[5]. Plaintiffs sought for deletion of para Nos.4 and 5 of the affidavit of DW-2. On 07.03.2019, defendants No.1 and 2 made a statement through her counsel Sh. Shashi Kumar and Sh. R.K. Sharma, that they have no objection, if the application of the plaintiff dated 07.03.2019 is allowed. On the basis of statement made by learned counsel for defendants No.1 and 2, the application was disposed of on 07.03.2019 by passing the following order:-

“Present: Sh. SK Lumb Adv counsel for plaintiff,

Sh. Shashi Kumar Adv counsel for defendant No.1,

Sh. R.K. Sharma Adv counsel for defendant No.2.

Learned counsel for the plaintiff moved an application to undone the portion of the affidavit of Smt. Resham Kaur as DW2 tendered in the court. Learned counsel for the defendant no.1 and 2 suffered statement that the defendants have no objection if the application of the plaintiff dated 7.3.2019 is

allowed. In view of the statement suffered by learned counsel for defendant no.1 and 2, application dated 7.3.2019 is disposed of.

Witnesses are present. Sh. RK Bhatti Adv is appointed as Local Commissioner for recording the evidence. His fee is assessed to be Rs.500/- as one of the witness is party to the suit. Let the file be handed over to LC.

*(Heena Aggarwal)
CJ(JD)/JMJC, Garshankar"*

[6]. Thereafter, one Kulveer Singh was examined in-chief as DW-4. In his affidavit, para No.1 was incorporated to the following effect:-

"1. That I am an agriculturist by profession. I am cultivating the land owned by Jhalman Singh son of Karam Singh and Resham Kaur wife of Jhalman Singh residents of Village Bhagtupur, Tehsil Garshankar, on rent since the year 2004. Previously, the rent was @ Rs.14,000/- per acre in the year 2004 and the same was enhanced after every two years. In the year 2010-2011 the rent was settled @ 25000/- per acre and presently the rate of rent is settled @ 35000/- per acre. I used to pay the rent to Resham Kaur. In the year 2011, in 1st week of Sept. I paid rupees ten lacs to Resham Kaur as rent for three years as she had told me that they have to purchase the land."

[7]. Perusal of the aforesaid paragraph would show that the same pleas as contained in para Nos.4 and 5 of the affidavit of DW-2, were recited by the witness in order to circumvent the order dated 07.03.2019 passed by the trial Court on the basis of statements made by learned counsel for defendants No.1 and 2. DW-4 Kulveer Singh is not the defendant in the suit. He was not privy to any source of money from where arrangement qua

consideration was made.

[8]. Petitioner filed an application to return the affidavit of DW-4 tendered in evidence being the facts beyond pleadings. The trial Court dismissed the application vide the impugned order on the ground that arrangement qua the sale consideration is to be proved with reference to the evidence on record and in terms of Order 6 Rule 2 CPC, every pleadings shall only contain material fact and not the evidence. The case is still at the stage of rebuttal evidence.

[9]. Learned counsel for respondent No.1 submitted that the plaintiffs have reserved their right to lead evidence in rebuttal and it is so evident from the order dated 22.08.2019 passed by the trial Court.

[10]. I have considered the submissions made by learned counsel for the parties.

[11]. Perusal of the record would show that the order dated 07.03.2019 was passed by the trial Court even after framing of additional issues vide order dated 13.10.2018. Once the paragraphs No.4 and 5 in the affidavit of DW-2/defendant No.1 were ordered to be deleted from being considered as statement in examination-in-chief of DW-2, the same cannot be allowed to be incorporated in the examination-in-chief of DW-4, who is not defendant in the suit. If respondent No.1/DW-2 was aggrieved

by the order dated 07.03.2019 passed by the trial Court, she was required to approach the same Court, as the only course available with her was to approach the trial Court for getting record corrected. In view of law laid down by the Hon'ble Apex Court in **State of Maharashtra vs. Ramdas Shrinivas Nayak and another, 1982 AIR (SC) 1249; Commissioner of Customs, Mumbai vs. Bureau Veritas and others, (2005) 3 Supreme Court Cases 265; Jagvir Singh & Ors. vs. State (Delhi Admn.), 2007(3) R.C.R. (Civil) 375 and Om Parkash vs. Principal, Government Sr. Secondary School, Nilokheri and others, 2012(19) R.C.R. (Civil) 279** in the event of finding any error in recording the order by the trial Court, it was incumbent upon defendant No1/DW-2 to move an application for correction before the trial Court. Having not done so, DW-4 cannot be placed in service to raise any pointed finger in order to circumvent the order dated 07.03.2019 which was never assailed by the defendants in any forum.

[12]. The order dated 07.03.2019 passed by the trial Court vide which learned counsel for defendants No.1 and 2 made a statement that the defendants have no objection if the application dated 07.03.2019 moved by the plaintiff is allowed, has attained finality. The statements of the defendants cannot be allowed to be withdrawn by way of circumventing the order

dated 07.03.2019 to that effect. The order passed in the context of para Nos.4 and 5 of the affidavit of defendant No.1/DW-2 and the same pleas having been allowed to be taken off from the affidavit cannot be reinserted in the statement of DW-4 Kulveer Singh that too, he is not defendant in the suit. Even if, the petitioner has reserved her right to lead evidence in rebuttal, the same cannot extend the scope of order dated 07.03.2019 passed by the trial Court vide which the subject matter of para Nos.4 and 5 of the affidavit of DW-2 and para No.1 of the affidavit of DW-4 Kulveer Singh fully coincides with the subject matter of para Nos.4 and 5 of the affidavit of DW-2.

[13]. For the reasons recorded hereinabove, I am of the view that the impugned order is not legally sustainable. This revision petition is allowed. The impugned order dated 24.04.2019 passed by the Civil Judge (Jr. Divn.) Garshankar is thus set aside. Normal consequences to follow.

December 03, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No