

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-30346 of 2019
Date of Decision: 05.09.2019

Manoj Kumar

...Petitioner

VERSUS

Shakuntla Devi and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Mukesh Yadav, Advocate
for the petitioner.

SURINDER GUPTA, J.(Oral)

Heard.

2. The petitioner filed complaint alleging that respondent no. 1-Shakuntla Devi vide agreement dated 05.05.2014 agreed to sell her house to petitioner. The date for execution of the sale deed was fixed as 18.06.2014. The petitioner had paid ₹25 lakhs out of total sale consideration of ₹26 lakhs but respondent no. 1 did not appear before Sub-Registrar to get the sale deed executed.

3. The petitioner came to know that part of the dispute property measuring 2 *marlas* had been sold by respondent no.1-Shakuntla Devi in favour of respondent no. 3-Rakesh Kumar vide sale deed dated 29.05.2014 for a sale consideration of ₹13 lakhs. He alleged that sale deed dated 29.05.2014 was a sham transaction.

4. The complaint was filed against respondent no. 1-Shakuntla Devi, Rajender Parsad, who is now represented by his son respondent no. 2-Hemant and respondent no. 3-Rakesh Kumar. So far as respondent no. 3-Rakesh Kumar is concerned, he had not entered into any deal with

petitioner, cheated him or executed any fabricated document. Rajender Prasad is alleged to be a marginal witness of the agreement executed by respondent no. 1, as such, he had also not committed any fraud with the petitioner or created any fabricated document.

5. In view of above, orders passed by learned Judicial Magistrate Ist Class, Narnaul and learned Additional Sessions Judge, Narnaul dismissing complaint against Rajender Prasad and respondent no. 3-Rakesh Kumar suffer from no legal infirmity or illegality, calling for any interference in this petition.

6. Against respondent no. 1-Shakuntla Devi, petitioner had filed suit seeking specific performance of his agreement, which he had withdrawn on the basis of compromise. Learned lower Court of revision has taken note of that compromise and observed in para 13 as follows:-

“13. Admittedly, on the basis of Agreement to Sell dated 05.05.2014, complainant had filed civil suit seeking Specific Performance of Contract and Declaration to set aside Sale Deed No.322 dated 29.05.2014 however, the same was got dismissed as withdrawn, after the matter was compromised before the Lok Adalat. It is also not disputed that CW-2 Ajay (who was attesting witness to Agreement to Sell dated 05.05.2014) has recently agreed to purchase the House from respondent No.3 and complainant is attesting witness to the agreement to sell executed between respondent No.1 and respondent No.3. Meaning thereby that complainant admits the ownership and title of respondent No.3 in respect of the House. In

such a situation, it does not lie in the mouth of the complainant to say that respondents had committed alleged breach of trust, cheating and forgery. Learned Magistrate rightly observed that civil dispute between the parties was camouflaged into criminal case and as such, summoning of respondents was not warranted.”

7. Before *Lok Adalat*, the petitioner had made statement that he has compromised with respondent no. 1-Shakuntla Devi and as per compromise respondent no. 3-Rakesh Kumar will execute the sale deed of disputed land in favour of petitioner or any other person as per his wish.

8. This fact is not disputed that respondent no. 3-Rakesh Kumar had executed an agreement in favour of one Ajay as per statement made by petitioner before *Lok Adalat* and the petitioner is an attesting witness of that agreement.

9. In view of above facts, learned Additional Sessions Judge, Narnaul while dismissing revision has rightly observed that no offence of cheating or forgery subsists for which respondent no. 3-Rakesh Kumar or either of the respondents can be summoned to face trial.

In view of facts discussed above, I find no legal or factual infirmity in orders passed by learned Judicial Magistrate Ist Class, Narnaul and learned Additional Sessions Judge, Narnaul, calling for any interference in this petition, which has no merit.

Dismissed.

September 05, 2019

jk

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No