

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

**RSA No.1077 of 2008 (O&M)
Date of Decision:21.02.2019**

Amar Chand through LR.

.....Appellant

Vs

Leela Wati

....Respondent

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

Present:Mr. Jagdish Manchanda, Advocate
for the appellant.

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Ashish Soi, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

CM No.6761-C of 2016

Prayer made in this application is for bringing on record the legal representative of deceased/appellant Amar Chand, who died on 03.04.2016.

For the reasons mentioned in the application, the same is allowed and the legal representative of deceased Amar Chand as shown in para no.2 of the application is ordered to be brought on record, subject to all just exceptions.

Amended memorandum of parties is taken on record.

RSA No.1077 of 2008 (O&M)

[1]. The present Regular Second Appeal was decided by the High Court vide judgment and decree dated 29.03.2011 against which SLP(Civil) No.22771 of 2011 was preferred which on conversion became Civil Appeal No.5456 of 2013. The said appeal was allowed by the Hon'ble Apex Court vide order dated 12.07.2013 and the judgment and decree of the High Court was set aside and the present RSA was restored to the file of the High Court for fresh decision in accordance with law. The Hon'ble Apex Court was pleased to remand the case to the High Court on the premise that the High Court had not framed any substantial question(s) of law while setting aside the judgments and decrees of the Courts below.

[2]. This Court wishes to examine the following substantial questions of law while deciding the appeal on merits:-

- (i) Whether statement of fact made by learned counsel for the plaintiff can be nullified at the appellate stage without ascertaining as to what had transpired at the time of hearing of the case?
- (ii) Whether anything recorded by the Court in its judgment is conclusive of the fact noticed therein and the person objecting to it must approach the same Court for necessary correction?

- (iii) Whether statement of fact made by the learned counsel for the plaintiff and recorded by the Court in its judgment can be treated as mere counters in the game of litigation?
- (iv) Whether recital of agreement to sell is dependent upon proving the mortgage deed in accordance with law?
- (v) Whether concurrent findings of fact recorded by both the Court below can be interfered with by the High Court while re-appreciating findings of the Courts below on merits?

[3]. Before advertng to the aforesaid substantial questions of law, this Court would appreciate the factual matrix of the case.

[4]. Plaintiff/appellant filed a suit for specific performance of agreement to sell dated 11.12.2002 in respect of suit property. Plaintiff asserted that the defendant was the owner of residential house consisting of two rooms, chowk, kitchen, latrine, bathroom, verandah and staircase which was part of *Khasra* No.164/22/1(5-6) to the extent of 3/106th share which comes to 3 *Marlas* (100 sq. yards) situated in Adarsh Colony, Palwal within the municipal limits. Defendant had purchased the land underneath the house vide sale deed dated 03.02.1992 and thereafter constructed the house. Defendant was in need of

money, therefore, she mortgaged the suit property in favour of the plaintiff for an amount of Rs.1,54,000/-. Registered mortgage deed was executed on 28.11.2002.

[5]. Plaintiff further asserted that the possession of the suit property was delivered to him after the execution of mortgage deed and since then plaintiff claimed himself to be in possession of the suit property as mortgagee. After execution of mortgage deed with possession, defendant entered into an agreement to sell the house in question to the plaintiff for a consideration of Rs.2 lakhs subject to adjustment of the mortgage amount. Agreement to sell was executed on 11.12.2002 and the defendant further received a sum of Rs.20,000/- as earnest money. The remaining sale consideration of Rs.26,000/- was agreed to be paid by the plaintiff to the defendant at the time of execution and registration of sale deed. Date of execution and registration of the sale deed was fixed as 10.12.2003. It was claimed that the plaintiff was ready and willing to perform his part of obligation on 10.12.2003.

[6]. Plaintiff further claimed that on 10.10.2003, he tendered the balance sale consideration of Rs.26,000/- to the defendant and demanded transfer of the suit property, but defendant avoided the same. Plaintiff further tendered the sale price on 25.10.2003, but defendant again refused to transfer the suit

property. Defendant filed a civil suit titled '*Leelawati vs. Amar Chand*' wherein she denied the execution of agreement to sell dated 11.12.2002. On the date fixed the plaintiff, attended the office of Sub-Registrar, but the defendant did not turn up to perform her part of obligation.

[7]. Defendant contested the suit on number of grounds. She claimed that the suit property was the only residential house of the defendant, where she was residing along with her minor children. Defendant was a widow and the house was joint Hindu family property of the defendant. The house was constructed by joint Hindu family of the defendant and the plot was purchased in the name of defendant in the year 1992 out of joint funds of the joint Hindu family. Execution of mortgage deed was denied, rather a sum of Rs.20,000/- was paid to the defendant as loan and the plaintiff obtained thumb impressions of the defendant on some papers and later on got procured the alleged mortgage deed in his favour in collusion with the witnesses and deed writer. Possession of the suit property was never delivered to the plaintiff on the date of alleged mortgage. Execution of agreement to sell was also denied for the alleged amount of Rs.2 lakhs on 11.12.2002. Receipt of Rs.20,000/- was also denied.

[8]. Defendant further claimed that the value of residential

house of the defendant was not less than Rs.7 lakhs and no prudent man would agree to sell the house in question for a paltry amount of Rs.2 lakhs. Plaintiff tried to take illegal possession of the house in dispute on 03.12.2003 and also threw away the household goods/articles of the defendant from the house in question. Matter was reported to the police and a complaint under Sections 148/149/152/448/323/506 IPC was registered against the plaintiff and his son vide FIR No.142 dated 03.12.2003.

[9]. Both the parties went to trial on the following issues:-

- “1) *Whether the defendant mortgaged with possession the disputed property with the plaintiff for a sum of Rs.1,54,000/- and executed and got registered a mortgage deed in favour of the plaintiff on dated 28.11.2002? OPP*
- 2) *Whether the defendant also entered into an agreement to sell the disputed property with the plaintiff on dated 11.12.2002 for a sum of Rs.2,00,000/- subject to adjustment of the mortgage amount and on that day received a sum of Rs.20,000/- as of part payment/earnest money from the plaintiff after adjusting a mortgage amount of Rs.1,54,000/-? OPP*
- 3) *Whether the plaintiff was and is still ready and willing to perform his part of contract? OPP*
- 4) *Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD*

- 5) *Whether the plaintiff is estopped from filling the present suit by his act and conduct? OPD*
- 6) *Whether the present suit is bad for non-joinder of necessary parties? OPD*
- 7) *Whether the present suit is not maintainable in the present form? OPD*
- 8) *Relief.”*

[10]. At the time of arguments before the trial Court, learned counsel for the plaintiff did not press issue No.1, therefore, no finding was recorded by the trial Court on the issue of mortgage deed. Under issue Nos.2 and 3, the trial Court found that the plaintiff has failed to prove both the issues and, therefore, same were decided against the plaintiff. Issue Nos.4 to 7 were not pressed by learned counsel for the defendant, therefore, those issues were decided against the defendant. Consequently, in view of findings recorded by the trial Court on issue Nos.2 and 3, the suit of the plaintiff was dismissed vide judgment and decree dated 05.09.2007.

[11]. Plaintiff unsuccessfully challenged the judgment and decree of the trial Court before the lower Appellate Court and the same was dismissed by the District Judge, Faridabad vide judgment and decree dated 02.02.2008.

[12]. Aggrieved against the aforesaid judgments and decrees passed by the Courts below, plaintiff approached the

High Court by way of filing RSA No.1077 of 2008. The High Court allowed the appeal without formulating any substantial questions of law. Thereafter, the Hon'ble Apex Court has remanded the case by accepting the Civil Appeal No.5456 of 2013 and RSA was restored to the file of the High Court for fresh consideration in accordance with law.

[13]. In view of remand order by the Hon'ble Apex Court, this Court proceeded to consider the substantial questions of law as formulated in preceding para No.2.

[14]. Substantial question Nos.(i) to (iii) are dependent upon legal position arising out of the statement made by learned counsel for the plaintiff at the time of arguments before the trial Court. Since issue No.1 was not pressed by learned counsel for the plaintiff, therefore, trial Court did not record any finding and the issue was given up. What fact transpired during course of hearing before the trial Court cannot be appreciated by any other Court at a subsequent stage. Plaintiff cannot be allowed to resile from the statement of fact made before the trial Court at a subsequent stage that too before the appellate forum. Appellate Court cannot launch into inquiry as to what transpired before the trial Court. Public Policy bars the Appellate Court to comment upon anything which was subject matter of concession/ relinquishment made by learned counsel for the plaintiff before

the trial Court. Judicial decorum restrains the Court from commenting upon such a feature which was not a subject matter of Appellate Court. The matters of judicial record are unquestionable and the same are not open to doubt. The Court cannot be dragged into the arena and the judgment cannot be treated as mere counters in the game of litigation. Whatever was stated before the trial Court by learned counsel for the plaintiff, the same was recorded while giving up issue No.1 and no finding was recorded by the trial Court thereafter.

[15]. The aforesaid aspect has to be treated as the last word on the subject and it is a settled legal principle that statements of fact as to what transpired at the time of hearing recorded in the judgment by the Court are conclusive of the fact so stated and no one can ask such statements by affidavit or otherwise. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party while the matter is fresh in the minds of Judges to call the attention of the very Judge, who has made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. This is the only way to have the record corrected. No one can be allowed to raise any finger on the findings recorded by the Court and the same has to be treated as final and decisive. The remedy available to the

aggrieved party/plaintiff was to approach the same Court by way of seeking clarification in the context of making statement by his counsel and giving up issue No.1 during proceedings of the case.

[16]. In **State of Maharashtra vs. Ramdas Shrinivas Nayak and another, 1982 AIR (SC) 1249** the aforesaid view was held on the basis of legal proposition. The said view was reiterated in **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**. The only course available with the plaintiff was to approach the trial Court for getting the record corrected. In the absence of any such step taken by the plaintiff, the matter must necessarily end. In the event of finding of any error in recording the judgment, it is incumbent upon the party to move an application for correction immediately before the same Court. Reference can be made to **Bhavnagar University vs. Palitana Sugar Mill Pvt. Ltd., 2002 AIR SCW 4939**. In view of legal position as narrated above, substantial questions of law Nos.(i) to (iii) are answered against the appellant as the appellant cannot re-agitate issue No.(1) at the appellate forum.

[17]. Substantial question of law No.(iv) is dependent upon the recital of agreement to sell which was based on proving the mortgage deed. Even if some evidence has come on record in respect of mortgage deed, but in view of statement made by learned counsel for the plaintiff, the issue No.(1) having not been pressed would have resultant effect on agreement to sell as well. Agreement to sell dated 11.12.2002 has been produced on record as Ex.P-2 and receipt Ex.P-3. Manohar Lal, who was examined as PW-1 brought on record the file of civil suit No.637/2003 titled '*Leelawati vs. Amar Chand*'. Raj Kumar Clerk PW-2 has proved plaint Ex.P-6 by identifying the signature of Deep Chand Sharma, Advocate, who had drafted the plaint. Badlu Ram Numbardar PW-3 was the witness of mortgage, he deposed that the same was executed in his presence and the same was drafted by Rattan Lal Sharma Deed Writer, in the presence of the parties. The scribe had read over the contents of the document and an amount of Rs.1,54,000/- was given to the defendant before execution of mortgage deed. The witness had also identified his signature on the mortgage deed Ex.P-1. Ram Gopal PW-4 was the attesting witness of agreement to sell Ex.P-2 and receipt Ex.P-3. Jaggan PW-5 was examined as attesting witness No.2 of the agreement to sell. PW-4 and PW-5 were the witnesses of the agreement to sell and receipt which

were scribed by Rattan Lal Sharma. Satish Chandra Handwriting and Fingerprint Expert was examined as PW-6, who proved his report Ex.PW-6/A. Plaintiff himself appeared as PW-7. Deed Writer was not examined by the plaintiff. It has come on record that Deed Writer was a blind person and he cannot read and write. Defendant denied agreement to sell Ex.P-2 and receipt Ex.P-3 by claiming the same to be the documents fabricated by the plaintiff. The agreement to sell was allegedly scribed on 11.12.2002, but the signature of Rattan Lal Sharma appearing on the agreement to sell and receipt bore serial No.364 dated 10.12.2002 i.e. a day earlier to the date of agreement to sell and receipt. How the scribe can record serial number No.364 dated 10.12.2002 in respect of agreement to sell and receipt which were executed on 11.12.2002 a day later than the aforesaid signature by Rattan Lal Scribe. The scribe was found to be a blind person, who cannot read and write. PW-4 Gopal has stated that the amount was paid at the house of the plaintiff and the transaction was completed on 10.12.2002. The documents were prepared on 11.12.2002, but at a later stage he said that he was not aware about the transaction and the same did not take place in his presence.

[18]. Similarly Jaggan PW-5 stated that on 28.11.2002, an oral agreement had taken place in the house of the plaintiff in

respect of money transaction. Regarding payment of amount of Rs.20,000/- vide receipt Ex.P-3, he deposed that they appeared before the Sub-Registrar on that day, whereas PW-7 deposed that after execution of agreement to sell they did not appear before the sub-Registrar. The contradictions in the statements of witnessed were found to be material contradictions and the execution of agreement to sell was not proved before the trial Court. Since issue of mortgage deed was left by the plaintiff himself, recital of agreement to sell was dependent upon proving the mortgage deed and the said fact in addition to the material contradictions resulted in failure on the part of the plaintiff to prove due execution of the agreement to sell. In view of aforesaid findings, substantial question No.(iv) is also negated and is decided against the appellant.

[19]. The delivery of possession of the house in favour of the plaintiff has not been proved on record. No evidence was brought by the plaintiff on record to show that possession was ever handed over to him by the defendant either at the time of execution of mortgage deed or at the time of alleged execution of agreement to sell. Statement of PW-4 Ram Gopal further established that the defendant was residing in the said house. Even the defendant has led evidence of her possession in the form of ration card Ex.D-1, house tax receipt Ex.D-2, Electricity

Bill Ex.D-3, challan form under Section 173 Cr.P.C. Ex.D-4, charge sheet of the criminal case Ex.D-5 and FIR Ex.D-6. The possession of the defendant over the suit property has been established by way of unimpeachable evidence on record. In view of findings of fact recorded by both the Courts below, it was not open in the Second Appeal to re-appreciate the findings recorded by the Courts below. The Court cannot arrive at different conclusion in the absence of any substantial questions of law in favour of the plaintiff particularly, when there is no misreading of evidence by the Courts below, nor the findings recorded by the Courts below are proved to be perverse.

[20]. In view of facts and attending circumstances of the case and in view of findings recorded on the substantial questions of law as framed by this Court, the appeal is found to be totally devoid of merits. This appeal is accordingly dismissed.

February 21, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No