

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

**RSA No.2126 of 2013 (O&M)
Date of Order: 25.03.2019**

Bohti Devi

..Appellant

Versus

Amar Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Manohar Lal, Advocate,
for the appellant.

Mr. Jagdish Manchanda, Advocate,
for respondents no.1,3, 5 and 6.

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant is in the regular second appeal against the judgments and decrees passed by the courts below, ordering refund of the total sale consideration along with appropriate rate of interest.

No doubt, the court is reluctant to interfere in the concurrent findings of fact, however, once this court reaches at a conclusion that the judgments passed by the courts below are result of total non- application of mind while hearing the second appeal, High Court is not debarred from re-examining the matter.

In the considered view of this court, following substantial questions of law arise for consideration:-

- (1) Whether in the absence of objections on the part of the defendants, the courts below were justified in declining the relief of specific performance on the ground that

ownership of defendants no.3 and 4 is not established?

- (2) Whether in the facts and circumstances of the present case, the courts erred in returning a finding that in absence of signatures of defendants no.1 and 2, the relief of specific performance of the agreement to sell cannot be granted?

Some facts are required to be noticed.

Mam Chand was owner of the property which consist of 3 shops for commercial use, 3 rooms for residence etc. constructed on plot measuring 21'x41'. It is the case of the plaintiff that he was inducted as a tenant. Thereafter, Mam Chand the owner, had been borrowing various amounts from time to time and thereafter on account of inability to pay, he entered into an oral agreement to sell the property in question for a sum of Rs.3,00,000/- in favour of the plaintiff and received Rs.2,70,000/- while adjusting previous loan amount. Mam Chand died on 15.05.2004. He left behind 4 sons i.e. defendants no.1 to 4. Defendant no.3 executed an acknowledgment deed which has been styled as an agreement admitting that his father had agreed to sell the property during his life time for a sum of Rs.3,00,000/- approximately 17 years ago and received Rs.2,70,000/- and remaining amount of Rs.30,000/- has been received by him under the agreement. A separate receipt of Rs.30,000/- was also executed. The agreement and receipt are Ex.P1 and Ex.P2. Vijay Kumar son of Prem son of Mam Chand also executed an affidavit, Ex.P3 admitting the receipt of Rs.2,70,000/- by his grand father and remaining Rs.30,000/- by his uncle Puran Chand. He admitted that Mam Chand had contacted to sell the property in dispute in favour of the plaintiff. Still further, Devi Chand,

defendant no.4 also executed an agreement Ex.P4, admitting the sale contract by his father in favour of the plaintiff. He also acknowledged receipt of Rs.30,000/-, the balance sale consideration has been paid to Puran Chand and there is no balance amount. Both these agreements are dated 29.07.2004 and 30.07.2004. It may be noted here that the possession of the plaintiff over the property in dispute was acknowledged.

Plaintiff-appellant filed this suit praying for decree of possession by way of specific performance of the agreement to sell along with the consequential relief of permanent injunction. Defendants no.1 to 4 i.e all sons of Mam Chand jointly filed a written statement wherein a stand was taken that signatures of Puran Chand and Devi Chand, defendants no.3 and 4 have been taken under the influence of intoxication. It was further pleaded that signatures of Puran Chand, Devi Chand and Vijay Kumar have been taken fraudulently. It may be significant to mention here that the defendants did not plead in defence that defendants no.3 and 4 were never authorized on behalf of whole body of heirs of Mam Chand

It may be noted here that plaintiff examined herself as PW1 whereas Sh. S.K.Dutta was examined as PW2 and Ms. Anita Rani was examined as PW3. All these witnesses were never cross-examined as defendants thereafter did not contest the suit.

Both the courts on appreciation of the evidence have dismissed the suit while ordering refund on two grounds:-

- (1) defendants no.1 to 4 are not proved to be owners of the property;
- (2) two agreements to sell signed by defendants no.3 and 4 cannot bind remaining defendants i.e. defendants no.1

and 2.

This court has heard learned counsels for the parties at length and with their able assistance gone through the judgments and decrees passed by the courts below and the record.

After going through the record, it is apparent that both the reasons arrived at by the courts below are erroneous. As noted above, defendants have not pleaded that they are not owners of the property after the death of Mam Chand. It is also not the plea of defendants no.1 to 4 that defendants no.3 and 4 i.e. Puran Chand and Devi Chand sons of Mam Chand were never authorized. Still further courts have erred in overlooking the fact that contract of sale, although, orally was entered into by Mam Chand, who was undisputed owner of the property. Two agreements dated 29.07.2004 and 120.07.2004 are only acknowledging previous contract of sale entered into by their father-Mam Chand. Still further defendants no.1 and 2 never pleaded that defendants no.3 and 4 were not authorized or defendants no.1 and 2 have never consented. As noted above, son of defendant no.2 has also filed an affidavit.

Still further, the affidavits of the plaintiff in examination in chief have gone unrebutted. In fact, defendants did not come forward to even cross-examine the plaintiff and the witnesses produced by her, therefore, oral evidence produced by the plaintiff has not been challenged in the cross-examination. Defendants as noted above were proceeded against ex-parte after filing the written statement and consequently they did not lead any evidence.

Keeping in view the aforesaid facts, both the reasons assigned by the courts below are erroneous. Accordingly, the questions which have

been framed are answered in favour of the plaintiff-appellant and against the respondents. The suit by way of specific performance of the agreement to sell filed by the plaintiff shall stand decreed. The judgments passed by the courts below ordering refund are accordingly modified. Since, entire payment of sale consideration has already been paid, defendants are directed to execute and register the sale deed in favour of the plaintiff within 2 months failing which the court shall get the sale deed executed and registered with respect to the suit property.

The regular second appeal is allowed.

March 25, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No