

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

RSA No.5075 of 2015 (O&M)

Date of decision:20.3.2019

Sukhmander Singh

Vs.

... Appellant

Gulab Kaur (since deceased) through LRs and

... Respondents

RSA No.5076 of 2015 (O&M)

Sukhmander Singh

Vs.

... Appellant

Gulab Kaur (since deceased) through LRs and

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Nakul Sharma, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

Mr. Nakul Sharma, learned counsel for the appellant submits that in compliance of the order dated 11.02.2019, he purchased 20 neem trees from the Nursery. A receipt thereof, is produced in Court which is taken on record. The statement made at bar is taken on board.

This order of mine shall dispose of two regular second appeals bearing Nos.5075 and 5076 of 2015 arising out of civil suit seeking specific performance of the agreement to sell dated 20.04.2004 filed on 12.03.2007 and counter claim for redemption of the registered mortgage deed dated 2.6.2005.

The appellant-plaintiff Sukhmandar Singh sought the specific performance of the agreement to sell, ibid by arraying the vendor, who is none else but his mother Gulab Kaur, alleged to have sold the land measuring 8 kanals for a total sale consideration of Rs.1,90,000/- against the receipt of Rs.60,000/- as earnest money. It was averred that agreement was scribed in the presence of Mohan Lal son of Sawan Ram, attesting witness. The stipulated date for execution and registration of the sale deed was 31.05.2005. However, the defendants verbally agreed with the plaintiff that she would execute a mortgage deed in favour of the plaintiff for a sum of Rs.1.00 lakh resulting into execution of the same on 2.6.2005 in the presence of Randeep Singh Lambardar and Balwinder Singh son of Kartar. The plaintiff had always been ready and willing to perform his part of the agreement.

Gulab Kaur appeared and filed the written statement and contested the suit by denying the agreement to sell as well as the mortgage deed as executed under some wrong impression.

On her demise, during the pendency of the suit, her legal representatives three in number were impleaded as parties and preferred the counter claim by seeking joint possession of the suit property on redemption of land on deposit of the mortgage amount. The plaintiff opposed the counter claim by reiterating the averments made therein.

The plaintiff in support of the aforementioned pleadings examined herself as PW1 and brought on record the documents Ex.P1, agreement to sell and closed the evidence by tendering into evidence the

certified copy of mortgage deed, Ex.P2. On the other hand, defendants examined Paramjit Kaur as DW1, legal representative of Gulab Kaur.

The trial Court dismissed the suit but decreed the counter claim. It is in these circumstances, two appeals were filed, which have also been dismissed.

Mr. Nakul Sharma, learned counsel appearing on behalf of the appellant-plaintiff submitted that once Gulab Kaur had already filed the written statement, her LRs on impleadment could not set up the counter claim under Order 8 Rule 6-A of Code of Civil Procedure. The readiness and willingness was also in existence as the suit was filed in March 2007 almost less than two years from the expiry of the stipulated date. The intention of the legal representatives turned hostile after death of Gulab Kaur, though the plaintiff was put into possession in terms of the agreement. The mortgage deed was executed only for the purpose of protecting the possession and the suit was slated for final arguments and application for taking the assistance of the expert for examination of the signatures/thumb impressions on the agreement to sell and mortgage deed remained undecided resulting into adverse order was taken in the grounds of appeal before the Lower Appellate Court but the same was also dismissed, therefore, there is perversity.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Sharma, for, the mortgage deed is a registered document admitted by the plaintiff nor has

been able to prove the execution of the agreement to sell as no attesting witness was examined but fact of the matter is that mortgage deed was not denied by the plaintiff. It was obligatory upon the plaintiff to examine the expert by leading the evidence in affirmative, therefore, pendency of the application without decision in fact was not maintainable and liable to be rejected. Redemption was consequential action which could not have been objected to in the manner and mode as indicated above.

As an upshot of my findings, arguments of Mr. Sharma, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeals.

Resultantly, the appeals are dismissed.

(AMIT RAWAL)
JUDGE

March 20, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No