

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 38 of 2015 (O&M)

Date of Decision: 08.05.2019

Devinder Singh Bhullar

...Appellant

VERSUS

Mohan Dei through LRs and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.S. Chauhan, Advocate
for the appellant.

Mr. Anmol Partap Singh Mann, Advocate
for respondents no. 1 and 2.

None for respondent no. 3.

SURINDER GUPTA, J. (Oral)

Suit filed by respondent no. 1-Mohan Dei (since deceased), now represented by legal heirs, and Dharam Paul Grover seeking the relief of specific performance of agreement dated 10.08.2001 executed by defendant no. 1-Kulwant Singh was decreed by Additional Civil Judge (Senior Division), Kapurthala against defendant no.1-Kulwant Singh and plaintiffs were allowed alternate relief to recover the principal amount with interest.

2. Plaintiffs filed appeal before Additional District Judge, Kapurthala and defendant no. 1-Kulwant Singh also preferred appeal. Learned Ist Appellate Court remanded the case to learned trial Court with direction to decide the same afresh with observations as follows:-

- (i) While deciding the case, on one hand, the learned lower court has decided the issues no. 1 to 3 in favour of the plaintiff and on the other hand, the learned lower court

has also decided issues no. 4B to 4D in favour of the defendant no. 2-Devinder Singh Bhullar, whereas in my view the issues no. 4B to 4D are dependent on issues no. 1 to 4.

- (ii) The learned lower court has ignored the rider put by the Hon'ble Supreme Court, in S.L.P. filed by original plaintiff Mohan Dei, to see itself whether the agreement to sell executed by Kulwant Singh with Devinder Singh Bhullar is ante dated to agreement executed by Kulwant Singh with original plaintiff Mohan Dei and her husband or not.

3. It is, however, pertinent to note that while remanding the case findings of trial Court on any of the issue were not set aside. Learned Additional District Judge, Kapurthala has also nowhere observed that judgment and decree passed by court below is set aside.

4. While plaintiffs has sought the relief of specific performance of agreement dated 10.08.2001, defendant no. 2 has alleged agreement dated 10.07.2001, on the basis of which sale deed dated 07.02.2003 was executed, in his favour. Learned trial Court has upheld agreement dated 10.08.2001 as legal and validly executed while allowing the alternate relief. It also upheld agreement dated 10.07.2001 and sale deed dated 07.02.2003 executed on the basis of this agreement. Learned Ist Appellate Court observed that findings of lower Court were contradictory.

5. The question, which arises for consideration, is as to whether with above observations case could be remanded to trial Court. Ist Appellate Court is all competent to re-appreciate the evidence on record, examine the

legality of findings recorded by the lower Court and then to record its own findings. Affirming or differing with observations recorded by the Court below merely because of the reason that findings on different issues were observed as contradictory is no reason to remand the case.

6. During pendency of the case, plaintiff had moved application to send agreement dated 10.07.2001 to Security Printing Press, Nasik for determination of month and date of printing of stamp paper on which agreement was written. That application was dismissed and the revision filed by plaintiffs was also dismissed by this Court vide order dated 04.07.2012 passed in CR No. 5913 of 2011. Plaintiffs filed special leave petition before Hon'ble Supreme Court, which was also dismissed. However, liberty was allowed to plaintiffs to raise objections with regard to authenticity of agreement dated 10.07.2001 at the appropriate time before the trial Court. Based on above observations, Additional District Judge, Kapurthala directed the lower Court to gather evidence as to which agreement to sell is ante dated and then to decide the case on merit after collecting appropriate evidence on record.

7. While recording above finding, Ist Appellate Court has gravely erred as it is not the duty of Court to collect evidence particularly when parties to suit have not come up with any application to record their evidence. If either of the party to suit or appeal intended to produce any evidence in support of its case, opportunity was available with it to move required application before Additional District Judge, Kapurthala and Ist Appellate Court could proceed to decide the same in accordance with law. Giving direction to gather evidence is not the requirement of order passed by the Hon'ble Supreme Court in S.L.P. filed by plaintiffs.

8. As a sequel of my above discussion, I find order passed by Additional District Judge, Kapurthala as perverse, illegal and not sustainable in the eyes of law. The same is set aside with direction to Court concerned/successor Court to take file of Civil Appeal no. 7283 of 2013 on board and proceed to decide the same on merit in accordance with law. Parties are directed to appear before concerned Court/successor Court on 30.05.2019.

9. This appeal is allowed in above terms.

May 08, 2019

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No