

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

128

RSA-4344-2017(O & M)
Date of Decision:13.03.2019

Neelam Devi

....appellant

Versus

Banesh Devi and others

.....respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Babbar Bhan, Advocate
for the appellant

AMIT RAWAL, J. (ORAL):

CM No.11275-C-2017

Application is allowed as prayed for. Delay of 55 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA-4344-2017

In compliance of the order dated 21.11.2018, the cost stands deposited.

The present appeal arises out of the concurrent findings of the facts and law of courts below whereby the suit for declaration by laying challenge to the sale deed No.1340 dated 03.12.2010 has been dismissed by the trial Court and affirmed in appeal.

The plaintiff alleged that her husband on 24.06.2008 had entered into an agreement in respect of two shops with defendant No.2 on receipt of the earnest money of Rs.10 lakhs. The stipulated date for

execution and registration of the sale deed was 24.06.2010. The defendants threatened the plaintiff for execution of the sale deed and manage to get the sale of three shops for a paltry amount of Rs.9,20,000/-. In these circumstances, the suit was filed in the year 2011.

The defendants opposed the suit and stated that it was a voluntary act of plaintiff to execute the sale deed in the presence of the witnesses and against payment of the consideration.

The plaintiff in support of the aforementioned evidence alleging the fraud and misrepresentation examined herself as PW1, Lakhi Lohra, Draftsman as PW2 and brought on record site plan ExP1, copy of sale deed dated 24.06.2008 as Ex.P2, copy of sale deed dated 03.12.2010 as Ex.P4 and copy of sale deed dated 19.04.2010 as Ex.P6, gift deed dated 20.01.2006 as Ex.P8.

The defendants examined DW1 Dilawar Singh, DW2 Rajender Singh, DW3 Bimal Pareek, Deed Writer and DW4 Lakhi Ram, Draftsman and also brought on record, sale deed dated 03.12.2010 as Ex.D1, site plan Ex.D2 and copy of site plan as Ex.D1/A.

Mr.Babbar Bhan, Advocate, learned counsel appearing on behalf of the appellant submitted that finding of the lower appellate Court in non-suiting the plaintiff on the ground of non examination of her husband was not requirement of law for the simple reason that the agreement to sell was not denied by the defendants. No ordinary and sane person would sell three shops as the terms and agreement of the agreement mentioned only two shops. The witnesses were none else but the persons of the defendants and therefore deposed against her. The amount of consideration and number

of shops itself was a sufficient ground for the Court to reject the plea of discretionary relief.

I have heard learned counsel for the appellant and of the view that the aforementioned arguments are not sustainable in the eyes of law for the simple reason that husband of the plaintiff who entered into agreement would have unveiled intention of the parties. The sale deeds do not reflect of the agreement to sell in question and therefore cannot be connected. Finding of the separate transaction is correct one. The witnesses of the sale deed have been coherent and consistent despite facing the extensive wrath of cross examination. Any sane person on whom any fraud is played would not sit idle rather run from pillar to post to take appropriate steps in lodging the FIR/complaint. No such material has come on record. Sale deed is a registered document which carries a presumption of truth. If at all there was some truth, efforts should have been made to examine the sub-Registrar who was posted at the relevant point of time. Withholding of that witness is also one of the ground for dismissal of the suit.

The findings of fact and law, thus, cannot be said to be suffering from illegality or perversity. No ground for interference is made out, much less involvement of any substantial question of law.

Resultantly, the appeal is dismissed.

March 13, 2019

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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether reportable-

Yes/No.
Yes/No