

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

RSA No.4387 of 2018
Date of decision: 02.12.2019

Jangir Kaur

... Appellant

Versus

Jabri Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Arshdeep S. Kler, Advocate, for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 10.11.2016, and as even the appeal preferred against the said decree failed and was dismissed on 18.07.2017, she is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for possession, permanent injunction as also for mandatory injunction. In brief, the case set out by the plaintiff was that parties had entered into an agreement to sell dated 19.02.2010, qua the suit property i.e. house measuring 268.33 sq. yards, for a total sale consideration of Rs.3,00,000/-. And the defendants had received the total sale consideration at the time of execution of the agreement itself in the presence of the witnesses, namely, Baldev Singh and Bhag Singh. For the house in question was situated within *Lal Lakir* of the village, there was no provision for registration of the sale deed, but ownership of the house was to be

transferred on the basis of transfer of possession. However, the defendants played fraud with the plaintiff as despite having received the total sale consideration they never delivered the actual possession of the house to the plaintiff. As the defendants were contemplating to further alienate the suit property, and the plaintiff was also entitled to receive the use and occupation charges @ Rs.4,000/- per month, thus, the suit.

In the written statement filed by defendant No.1, he denied the execution of the agreement to sell dated 19.02.2010 and the receipt of any consideration. In fact, his wife had expired leaving behind two children, who too subsequently passed away. Whereafter the defendant started living with his nephews Sohan Singh and Mohan Singh. Plaintiff approached defendant No.1 with a proposal to marry him and obtained his signatures on certain papers on the pretext that those were required for registration of marriage. Subsequently, she fabricated those documents and started proclaiming the agreement to sell qua the suit property executed in her favour. Therefore, the suit was liable to be dismissed.

In a separate written statement filed by defendant No.2, he denied the execution of the alleged agreement. Rather, he pleaded an agreement to sell dated 13.12.2007 executed by defendant No.1 in his favour qua the suit property.

Upon consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that undoubtedly defendant had admitted his signatures on the agreement, but he had set up a plea that his signatures were obtained by fraud. Thus, the onus to prove that parties had indeed entered into any contract qua the suit property and the agreement dated 19.02.2010 was executed, was upon the plaintiff. Of course, once the

plaintiff had succeeded to prove the agreement, the onus would have shifted upon the defendant to substantiate his plea that the alleged agreement was a result of fraud. Concededly, the agreement was executed in the presence of two witnesses, namely, Bhag Singh and Baldev Singh. However, plaintiff failed to examine any of those to substantiate her claim. Therefore, the plaintiff chose to withhold her best evidence. Significantly, the recitals in the agreement revealed that possession of the suit property had since been delivered to the plaintiff, whereas her own case was that actual physical possession always remained with the defendant. Significantly, the agreement was executed on 19.02.2010, whereas the present suit was filed after over one and half year on 13.12.2011, and the plaintiff failed to explain as to why she chose to remain quite all this while. Particularly, when she alleged to have paid the entire sale consideration.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at were either contrary to the record or suffered from any material illegality. Thus, no ground is made out to interfere with the concurrent findings recorded by both the Courts.

The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

02.12.2019

Rajan

Whether speaking / reasoned:

YES

Whether Reportable:

NO