

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

RSA No.5404 of 2017 (O&M)

Date of decision:14.05.2019

Malkiat Singh

... Appellant(s)

Vs.

Rajwinder Kaur & others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Deepshikha Chauhan, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.14407-C-2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 13 days in filing the appeal is condoned.

C.M. stands allowed.

RSA No.5404 of 2017 (O&M)

Appellant-defendant no.1 is aggrieved of the judgment and decree of the Lower Appellate Court whereby instead of granting the discretionary relief sought by the respondent-plaintiff declined by the trial Court has been confined to the alternative relief.

The respondent-plaintiff alleged that appellant had entered into agreement to sell dated 18.05.2001 in respect of land belonging to him for a total sale consideration of Rs.4,67,000/- against the receipt of Rs.2.00 lakhs as earnest money. The alleged agreement to sell was witnessed by Pal Singh

and written by Scribe. The stipulated date for execution and registration of the sale deed was 20.11.2001. However, the defendants did not come forward and therefore, the suit aforementioned was filed in 2005. Appellant/defendant no.1-Malkiat Singh had appointed Pal Singh as General Power of Attorney to do all the acts in respect of the suit property.

It was further alleged that plaintiff had paid a sum of Rs.1.00 lakhs in cash to defendants no.2 and 3 on behalf of all the defendants on 21.12.2002 and the possession of the suit property was handed over. The plaintiff came to know regarding the alienation/transfer of the mortgaged rights of defendants no.2 to 8 in favour of defendant no.1 vide registered gift deed dated 18.06.2004 which was illegal and false.

The defendants no.2 to 8 were proceeded against ex parte despite service. Appellant/defendant no.1 stated that nephew of the defendant namely Nishan Singh wanted to go abroad i.e. Germany and in lieu thereof, the document/agreement was only for security as plaintiff assured safe journey and settlement but they committed fraud and cheating. Even FIR was also lodged against the plaintiff and her husband. It has come to the knowledge that many FIRs have been registered against the plaintiff and her husband. The agreement was stated to be result of fraud.

The trial Court framed eight issues including 7-A. The plaintiff examined six witnesses and brought on record Ex.P1 to Ex.P18 whereas defendant examined seven witnesses and brought on record Ex.D1 to Ex.D11 and report of handwriting expert, photographic chart, complaint etc.

The trial Court noticing that the plaintiff failed to examine the witnesses or scribe dismissed the suit but the Lower Appellate as noticed above partly decreed the suit.

Ms. Deepshikha Chauhan, learned counsel for the appellant submitted that in the absence of examination of the witnesses to the agreement to sell, intention to sell or purchase the land remained un-proved. It was only for security without any consideration. The handwriting expert has also given the statement that signatures were obtained on blank paper. The plaintiff and her husband have been embroiled in many criminal cases in duping the persons. The interest @ 8% is phenomenal.

I am afraid the aforementioned arguments are not sustainable in view of the categorical admission of the defendant of having appended the signatures on the document as security, the same cannot be said without consideration. It has to be monetary one as her nephew was sent to Germany. No counter claim has been set up for refund of amount on account of non-performance of the promise. It is in these circumstances, the Lower Appellate Court declined the discretionary relief confined it to the alternative relief.

As an upshot of my findings, arguments of Ms. Chauhan, 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 Lower Appellate Court. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

May 14, 2019
savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No