

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Regular Second Appeal No. 5021 of 2018(O&M)

Date of Decision: January 15 , 2019.

Paramjit Kaur

..... APPELLANT (s)

Versus

Avtar Singh and another

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Vikas Mohan Gupta, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

CM No.13709-C of 2018

This is an application for making good the deficiency in Court fee.

It is submitted that deficiency in the Court fee has since been made good. Extension in time to deposit the same is afforded till the deposit.

Application is accordingly disposed of.

RSA No.5021 of 2018(O&M)

Appellant/plaintiff is aggrieved of the judgments and decrees dated 31.01.2017 and 25.05.2018 passed by the learned Civil Judge(Junior Division),

Ludhiana and the learned Additional District Judge, Ludhiana, respectively.

Appellant/plaintiff filed a suit seeking a decree of declaration to the effect that,

- (i) plaintiff is the owner-in-possession of the land measuring five kanals as detailed in the plaintiff on the basis of sale-deed dated 22.09.2003 executed by Teg Ditar Singh,
- (ii) agreement dated 13.07.2001 allegedly executed by defendant No.2-Darshan Singh in favour of defendant No.1-Avtar Singh is a forged and fabricated document,
- (iii) Exparte decree dated 14.08.2004 passed by the court of Civil Judge(Senior Division), Ludhiana in civil suit No.167 dated 17.08.2002 filed by Avtar Singh against Darshan Singh was null, void, illegal and not binding on the rights of the plaintiff/appellant,
- (iv) sale-deed dated 21.06.2006 executed by defendant No.2-Darshan Singh in favour of defendant No.1-Avtar Singh on the basis of exparte decree dated 14.08.2004 was a result of fraud, misrepresentation, therefore not binding on the rights of the plaintiff/appellant, and
- (v) vendor of the plaintiff, Teg Ditar Singh had a prior right and interest over the suit property on the basis of agreement dated 29.05.2001 executed in his favour by defendant No.2-Darshan Singh.

Further relief of permanent injunction restraining the

defendants from interfering in the possession of the plaintiff over the suit property, was sought as well.

As per the facts pleaded in the plaint, it was stated that the plaintiff/appellant and defendant No.2 – Darshan Singh are husband and wife, but due to a strained relationship between them, they started residing separately. Appellant/plaintiff claimed to be in actual physical possession of the property in question alongwith other property in her name. Land in dispute which earlier belonged to the plaintiff's husband Darshan Singh was sold by Darshan Singh to Teg Ditar Singh vide sale-deed dated 23.10.2002 without any legal necessity. The plaintiff however repurchased the said property from Teg Ditar Singh by giving him the sale-consideration which he had paid to Darshan Singh at the time of execution of the abovesaid sale-deed dated 23.10.2002. The suit property was thus repurchased by the plaintiff vide registered sale-deed dated 22.09.2003. Plaintiff/appellant later came to know from the village Nambardar that sale-deed dated 21.06.2006 had been executed by defendant No.2 – Darshan Singh in favour of defendant No.1 – Avtar Singh on the basis of an exparte decree dated 14.08.2004 passed on the strength of agreement dated 13.07.2001, which was alleged to be a procured and fabricated document only with a view to deprive the plaintiff of the suit property. It was further alleged that defendant No.1-Avtar Singh in connivance with defendant No.2-Darshan Singh obtained the impugned exparte decree by connivance and misrepresentation. Defendant No.2, it is stated, has no right to execute agreement to sell as he had already alienated the suit land in favour of Teg Ditar Singh vide sale-deed dated 29.05.2001. When

the right of the plaintiff over the suit land was not accepted, the present suit was filed.

Defendant No.1-Avtar Singh resisted the suit. Various preliminary objections were taken in the written statement regarding maintainability, suppression of material facts etc. Averments on merit were denied. It was denied that sale-deed dated 21.06.2006 was a result of forgery and misrepresentation or that decree dated 14.08.2004 was a result of collusion and misrepresentation. It was stated that defendant No.2-Darshan Singh had failed to honour agreement to sell dated 13.07.2001 executed by him therefore, defendant No.1 was constrained to file the suit for possession by way of specific performance, which was ultimately decreed in favour of Avtar Singh. Defendant No.2, it was claimed, had no right to sell the suit property to Teg Ditar Singh vide sale-deed dated 23.10.2002 during the pendency of the suit filed by defendant No.1. Therefore, the sale-deed was in any case hit by the rule of lis-pendens. The alleged sale-deed in favour of Teg Ditar Singh as well as the plaintiff was claimed to be a sham-transaction only with a view to deprive defendant No.1 of the benefits of the decree dated 14.08.2004 and delay the proceedings. Dismissal of the suit was prayed for.

Defendant No.2 i.e., husband of the plaintiff did not appear, despite service. He was proceeded against exparte. Replication was filed to the written statement filed on behalf of defendant No.1. From pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP

2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable and liable to be dismissed? OPD1
4. Whether the plaintiff has not come to the court with clean hands and has concealed and suppressed the material facts from this Court? OPD1
5. Whether the plaintiff is estopped by her own act and conduct to file the present suit? OPD1
6. Relief.

Learned trial court on considering the facts, circumstances and evidence on record concluded that the plaintiff failed to prove her case. She could not prove on record that agreement dated 29.05.2001 was indeed executed between the parties or that the property in question was repurchased by her from Teg Ditar Singh after passing of any consideration. Sale-deed in her favour was held to be hit by the doctrine of lis pendens. It was categorically concluded by the learned trial court that the plaintiff was not entitled for relief was claimed for. Appeal filed by the plaintiff was also dismissed by the learned Additional District Judge, Ludhinaa vide impugned judgment and decree dated 25.05.2018.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant/plaintiff vehemently argues that both the learned courts below have grossly erred in dismissing the suit filed by the plaintiff/appellant. Plaintiff/appellant had purchased the property in question vide registered sale-deed dated 22.09.2003. An agreement to sell dated 29.05.2001 had been entered into by the plaintiff's husband Darshan Singh in favour of Teg Ditar Singh pursuant to which sale-deed dated 14.10.2002 was

executed. The property was however repurchased by the plaintiff vide a registered sale-deed dated 22.09.2003 by handing over the consideration received by Darshan Singh Singh to Teg Ditar Singh. The property had been sold by Darshan Singh without any legal necessity. The plaintiff and her husband Darshan Singh had strained relations. The plaintiff was constrained to repurchase the property. Both the learned courts below, it is submitted, have wrongly concluded that the sale in favour of the plaintiff is hit by the doctrine of lis pendens. It is urged that agreement to sell dated 29.05.2001 has been entered into by Darshan Singh with Teg Ditar Singh. The said agreement to sell was prior in time to agreement dated 13.07.2001, which was entered into between defendant No.2-Darshan Singh and defendant No.1-Avtar Singh. Therefore, defendant No.2-Darshan Singh, in fact, had no right whatsoever to sell the property to Avtar Singh at the time when the agreement to sell dated 13.07.2001 was entered into between Darshan Singh and Avtar Singh. Moreover, it is wrongly held by both the learned courts below that objections filed by the plaintiff and her application under Order 21 Rule 97 CPC being disposed of precluded her from filing a separate independent suit. The plaintiff and her husband – respondent No.2 had strained relations, due to which she was constrained to repurchase the property in question. It is thus prayed that the present appeal be allowed and the impugned judgments and decrees passed by the learned courts below be set aside. Consequently, suit of the plaintiff be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file with his assistance.

The plaintiff has set up a case while pleading that she is the owner in possession of the suit property measuring five kanals on the basis of sale-deed dated 22.09.2003 executed by Teg Ditar Singh in her favour. She has sought a declaration to the effect that sale deed dated 21.06.2006 executed by Darshan Singh, her husband in favour of defendant No.1 on the basis of exparte decree dated 14.08.2004 is null, void, without any legal necessity and thus not binding on her rights. It is further pleaded that agreement 13.07.2001 executed between defendant No.2 and defendant No.1 is a forged and fabricated document being a result of collusion between the two. Exparte judgment and decree dated 14.08.2004 has also been challenged by the plaintiff. It is apparent from a perusal of the file that defendant No.1 Avtar Singh had filed a suit for specific performance against Darshan Singh, defendant No.2 and husband of the plaintiff on the basis of agreement dated 13.07.2001. Avtar Singh filed the abovesaid suit on 16.08.2002 which was decreed on 14.08.2004. Thereafter, sale-deed dated 21.06.2006 was executed during execution proceedings. Sale-deed (Ex.P1) in favour of Teg Ditar Singh i.e., predecessor-in-interest of the plaintiff was executed on 14.10.2002, admittedly during the pendency of the abovesaid suit filed by defendant Avtar Singh. Argument raised on behalf of the appellant/ plaintiff that agreement dated 29.05.2001 (Ex.P2) was prior in time to the agreement dated 13.07.2001 executed between the defendant No1. and 2, hence sale-deed in favour of Teg Ditar Singh is not hit by doctrine of lis pendens, is devoid of any merit. This is so for the reason that first and foremost the said agreement dated 29.05.2001 is rightly held to be shrouded in suspicious circumstances. The said agreement is admittedly not scribed by any deed writer.

No scribe has been examined to prove the said agreement. There is no entry in the register of a deed-writer which was proved on record. There is no reference of this agreement dated 29.05.2001 in the sale-deed (Ex.P1) alleged to have been executed on the basis of said agreement. It is further not denied that agreement dated 29.05.2001 pertains to land measuring six kanals and 16 marlas whereas sale-deed (Ex.P1) pertains to five kanals only. In the agreement (Ex.P2), amount of consideration is mentioned as ₹2,00,000/- and earnest money of ₹ 65,000/- is stated to have paid on 29.05.2001 itself. Due date of the registration of the sale-deed is mentioned to be 30.11.2001. However, sale-deed (Ex.P1) is stated to have been executed on 14.10.2002. There is no explanation in this regard. There is no document to show that there was any extension of time. There is even a discrepancy in the amount of consideration mentioned in the sale-deed. Passing of the consideration amount between Darshan Singh and Teg Ditar Singh and even between the plaintiff and Teg Ditar Singh is not proved on record. It is further proved on record that defendant Avtar Singh had no knowledge of the said agreement to sell or even the sale-deed by Darshan Singh in favour of Teg Ditar Singh. Moreover, it is rightly concluded by both the learned courts below that an agreement to sell by itself cannot confer any title or right in favour of any particular party.

It is further relevant to note that though the plaintiff claimed to have strained relations with her husband Darshan Singh, this plea is not substantiated by any evidence on record. To the contrary, it is proved that defendant No.2- Darshan Singh and his wife –the plaintiff were, in fact, residing together. It is specifically observed by the learned Additional District Judge, Ludhiana that a

perusal of Ex.D10 i.e., order 17.09.2002 reveals that defendant No.2-Darshan Singh was served through his wife which shows that the appellant/plaintiff and Darshan Singh were residing together. Learned counsel for the appellant is unable to point out any evidence on record which would indicate strained relations between the appellant/plaintiff and her husband – Darshan Singh. There is indeed no evidence on record to show that there was any connivance between Avtar Singh and Darshan Singh or that Avtar Singh had any knowledge of the sale-deed in favour of Teg Ditar Singh during the pendency of the suit. It is reiterated that there is no evidence on record to show strained relations between the plaintiff/appellant and her husband-Darshan Singh. Both the sale-deeds dated 14.10.2002 (by Darshan Singh in favour of Teg Ditar Singh) and 22.09.2003 (by Teg Ditar Singh in favour of the plaintiff) were executed during the pendency of the suit filed by Avtar Singh against Darshan Singh, therefore, hit by the doctrine of lis pendens.

Another argument vehemently raised by learned counsel for the appellant is that both the learned courts below have wrongly dismissed the suit filed by the plaintiff on the ground that she was precluded from filing a separate independent suit on the premise that she had withdrawn the objection petition filed before the executing court in the matter of Avtar Singh v. Darshan Singh without seeking a permission to file another suit on the same cause of action. Keeping in view the facts and circumstances of the case and the discussion as above, it is clear that even if this argument raised on behalf of the appellant is accepted it would be of no avail as the plaintiff has failed to prove her case on the basis of the evidence on record.

Therefore, both the learned courts below have rightly dismissed the

suit filed by the plaintiff and have rendered concurrent findings of fact on the basis of proper appreciation of the evidence on record which do not call for any interference by this Court.

No other argument has been raised.

Learned counsel for the appellant/plaintiff is unable to point out any question of law, much less substantial question of law, which may be involved for consideration in this Regular Second Appeal.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 31.01.2017 and 25.05.2018 passed by the learned Civil Judge (Junior Division), Ludhiana and the learned Additional District Judge, Ludhiana, respectively, which warrant any interference by this Court.

Present appeal is, consequently, dismissed with no order as to costs.

January 15 , 2019.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No