

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

**RSA No.5386 of 2018 (O&M)
Date of Decision:12.03.2019**

Smt. Kelo Devi and others

.....Appellants

Versus

Smt. Urmila Devi

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Baljit Beniwal, Advocate
for the applicant-appellants.

LISA GILL, J.

Appellants-defendants are aggrieved of judgment and decree dated 22.09.2015, passed by the learned Civil Judge (Jr. Division), Kaithal, as well as judgment and decree dated 21.02.2018, passed by the learned Additional District Judge, Kaithal, whereby suit for possession by way of specific performance filed by the plaintiff-respondent has been decreed.

Brief facts necessary for the adjudication of the case are that the plaintiff-respondent filed a suit for possession by way of specific performance of the oral agreement and act dated 20.06.2008 directing the defendants i.e., the present appellants to get the sale deed registered *qua* the suit land with consequential relief of permanent injunction for restraining the defendants from alienating or selling the suit land or creating any kind of charge thereon. It was pleaded that the defendant-appellants are the owners in possession of land measuring 18 Kanals 15 Marlas equivalent to 35/267 share out of land measuring 13 Kanals 7 Marlas as described in the plaint as

per jamabandi for the year 2002-03 in the revenue state of Patti Dogar, Tehsil and District Kaithal. Plaintiff-respondent claimed to have purchased from the defendants land, 2 Kanal 14 marlas equivalent to 54/267 share out of total land measuring 13 Kanal 7 Marlas as described in the plaint within the revenue estate of Patti Dogar, District Kaithal and land measuring 2 Kanal 2.33 Marlas equivalent to 42.33/127 share out of land measuring 6 Kanal 7 Marlas vide two registered sale deeds no. 5961 and 5960 of the even date i.e. 07.10.2005.

It was further pleaded that the defendants approached the plaintiff on 18.02.2008 and revealed that they had wrongly sold 2 Kanal 2.33 Marlas of land situated Patti Khot to her as they had already sold 1 Kanal 15 Marlas of the said land to one Gurnam Singh son of Sadhu Singh vide registered sale deed no. 190/1 dated 09.04.2004. Defendants-appellants, it was stated told the plaintiff that Gurnam Singh was adamant to lodge a criminal case against them. Therefore, defendants requested the plaintiff to get her sale deed corrected so as to leave out 01 Kanal 15 Marlas of land of Patti Khot and in lieu thereof, they would sell 01 Kanal 15 Marlas of land situated in Patti Dogar. The plaintiff with a view to help the defendants out of their practical difficulty accepted their request and amended sale deed was executed on 19.02.2008. However, the Revenue Officer refused to accept the sale deed and did not sanction the mutation. The defendants, then requested the plaintiff on May 2008 to execute a sale deed in favour of Gurnam Singh qua 01 Kanals 15 Marlas of land and that the defendants in lieu thereof would execute another sale deed in favour of the plaintiff. Plaintiff while not suspecting their *bona fides* went to the office of the Registrar on 20.06.2008.

Two sale deeds were got scribed from Subhash Sharma, Deed Writer. They were signed and presented before the Sub-Registrar. Sale deed dated 20.06.2008 executed by the plaintiff in favour of Karamjit Kaur wife of Gurnam Singh was registered at no. 2609/1.

When the sale deed by the defendants in favour of the plaintiff was presented before the Sub-Registrar, some technical defects occurred in the computer system and the sale deed could not be registered immediately. Defendants, it is claimed left the spot while promising to come back and have the sale deed registered on removal of the technical defect. Sale deed could not be registered on the same day. Plaintiff then requested the defendants for registration of the sale deed, but to no avail. Legal notice, Ex.P10 was served upon the defendants but defendants refused to accept the notice. Therefore, the suit was filed.

Defendants resisted the suit. Various preliminary objections were raised in the written statement. Averments on merits were denied though, it was admitted that the defendants were owners in possession of the suit property. It was stated by the defendants that they are illiterate, simpleton kind of persons and were trapped by the plaintiff and her husband. Their thumb impressions and signatures were obtained on blank papers on the pretext of sanction of a loan from a Bank in their favour. It was further pleaded that defendants never approached the plaintiff while expressing that they had wrongly sold 02 Kanals 2.33 Marlas of land from Patti Khot to her. It is denied that they sold any land to Gurnam Singh, rather the plaintiff and Gurman Singh, it is stated are in collusion with each other. No supplementary sale deed was ever executed in favour of the plaintiff and

defendants never approached Subhash Sharma, Deed Writer, on 20.06.2008 and never asked him to scribe any sale deed. Dismissal of the suit was prayed for.

From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to the decree for possession by way of specific performance?OPP
2. Whether the plaintiff has no locus-standi and cause of action to file the present suit?OPD
3. Whether the suit of the plaintiff is false and frivolous and liable to be dismissed?OPD
4. Whether the plaintiff has concealed true and material facts from the Court?OPD
5. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances, as well as the evidence on record concluded that the plaintiff had successfully proved her case on the basis of evidence on record. Suit filed by the plaintiff-respondent was accordingly decreed and the defendants-appellants were directed to complete all the formalities for the execution and registration of the sale deed dated 20.06.2008 *qua* the suit land and to handover the actual physical possession thereof. The defendants were also restrained from alienating the suit property to anyone else or to create any third party interest.

Appeal filed by the present appellants-defendants was also dismissed by the learned Additional District Judge, Kaithal, vide impugned judgment and decree dated 21.02.2018.

Aggrieved therefrom, present appeal has been filed by the

appellants-defendants.

Learned counsel for the applicants-appellants vehemently argues that the plaintiff has miserably failed to prove her case. Both the learned Courts below have grossly erred in decreeing the suit filed by the plaintiff-respondent as it is highly improbable that the present appellant would have approached the plaintiff to execute the amendment in the recital of the sale deed in her favour and thereafter asked her to execute a registered sale deed in favour of Karamjit Kaur wife of Gurnam Singh. It is further submitted that grant of relief of specific performance in this case is inequitable as the suit was filed towards the end of the period of limitation. Therefore, at best, the plaintiff can be held entitled to recovery of the consideration amount. He relies upon judgment of the Hon'ble Supreme Court in **K.S.Vidyanadam Vs. Vairavan 1997(2) R.C.R (Civil) 312**. It is thus prayed that present appeal be allowed and the suit filed by the plaintiff-respondent be dismissed.

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

The plaintiff in order to prove her case has examined PW-1-Ishwar Singh, her husband. He has reiterated the averments in the plaint. PW-2-Bhumi Devi, son of Ved Parkash, is one of the witnesses of the sale deed dated 20.06.2008, Ex.P-13. He has clearly deposed in respect to the completion of the formalities of the execution and registration of sale deed no. 2609/1 dated 20.06.2008 i.e. Ex.P-13 and that it is due to a technical fault in the computer at the Tehsil Office that the sale deed could not be registered. PW-2 deposed that the defendants left at that time, stating that

they would come present in the Tehsil for registration of the sale deed once the technical glitch is resolved. PW-3-Shiv Kumar, Registry Clerk, Tehsil Office Kaithal proved the registered sale deed no. 5961 and 5960, both dated 07.10.2005 executed by the defendants in favour of the plaintiff i.e. Ex.P-1 and P-2. Registered sale deed dated 190/1 dated 09.04.2004 by the defendants in favour of Gurnam Singh proved by him is Ex.P-4. PW-3 also proved the registered supplementary deed no. 7632 dated 19.02.2008 Ex.P-5 and registered sale deed no. 2609/1 dated 20.06.2008, Ex.P-6. He proved the relevant entries in the register maintained by them regarding the aforementioned sale deeds. PW-4 Deepak Sharma son of Subhash Chand Sharma, deed writer proved the signatures of his father Subhash Chand Sharma, deed writer, who had scribed the registered sale deed no.2609/1, Ex.P-6 as well as sale deed Ex.P-13. Relevant entries no.234 and 235 dated 20.06.2008 in the register maintained by his father were also proved. PW-4 deposed that signatures of the defendants i.e. Kelo Devi, Amarjit and Avtar Singh were present in the register maintained by his father pertaining to the entry No. 235. PW-5 Ramesh Chand, Numberdar, Patti Khot, Kaithal, a witness of the registered sale deed Ex.P-6 as well as Ex.P-13, identified his signatures on both the documents. Defendant-appellant no.1-Kelo Devi testified before the learned trial Court as DW-1.

It is a matter of record that the defendants in their written statement denied the averments in the plaint and categorically denied having sold any of their land to the plaintiff or to Gurnam Singh. Categorical stand of the defendants is that their thumb impressions were obtained on blank papers on the pretext of sanction of some loan. However, it is relevant

to note at this stage, DW-1 in her cross examination admitted that she sold some land to the plaintiff-Urmila Devi. She also admitted sale of 01 Kanal 15 Marlas of Land to Gurnam Singh in Patti Khot, Kaithal, vide registered sale deed no.190/1 dated 09.04.2004. Learned trial court has rightly observed that it appears to be a clear cut case of dishonesty on the part of the defendants, in failing to complete the formalities of the execution and registration of sale deed dated 20.06.2008 in favour of the plaintiff. It is a matter of record that photographs of the defendants are very much present on the sale deed Ex.P-1, Ex.P-2, P-5 and P-6. DW-1 when shown the said photographs at the time of cross-examination went to the extent of expressing her inability to see the photographs by stating that she did not have her spectacles with her. The sequence of events clearly shows and reflects the truth in the averments made by the plaintiff. Registered sale deed Ex.P-6 executed by the plaintiff in favour of Karamjit Kaur wife of Gurnam Singh is dated 20.06.2008. It is mentioned in Ex.P-6 that the sale consideration had already been received by the defendants in sale deed No.190/1 dated 09.04.2004 and no money had exchanged hands. In such a situation, coupled with the admission of the appellant about execution of sale deed dated 09.04.2004 in favour of Gurnam Singh, if it was not the request of the defendants, there was no reason whatsoever for the plaintiff to have executed and got registered the said sale deed in favour of the wife of Gurnam Singh without any sale consideration. This fact in itself, is sufficient to establish the case of the plaintiffs. The plaintiff has duly proved the execution of the documents in question.

Argument raised on behalf of the appellants that the plaintiff

herself did not step into the witness box, therefore the suit should be dismissed, is devoid of any merit. PW-1 Ishwar Singh husband of the plaintiff has duly testified before the learned trial Court. He is well conversant with the facts of the case. Thus, in the given facts and circumstances, the plaintiff cannot be non suited on this account. It is vehemently argued by learned counsel for the appellants that grant of relief of specific performance is inequitable in the facts and circumstances of the case. The suit has been filed at the fag end of the period of limitation. This argument raised by learned counsel for the appellants is devoid of any merit in the factual matrix of the case. The Hon'ble Supreme Court in **K.S.Vidyanadam's case (Supra)** has clearly observed that reasonable time has to be determined from all surrounding circumstances. In the present case, it cannot be concluded by any stretch of imagination that grant of relief for specific performance of the sale deed is inequitable in any manner. In fact, it is the plaintiff who has suffered in this situation.

Learned counsel for the appellants-defendants 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. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decrees dated 22.9.2015 and 21.02.2018 passed by the learned Civil Judge (Jr. Division) Kaithal and learned Additional District Judge, Kaithal, respectively, are upheld.

There is a delay of 122 days in filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in filing of this appeal has been rendered academic. Application is accordingly disposed of.

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

12.03.2019
s.khan

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.

[LISA GILL]
Judge

SANJAY KHAN
2019.04.09 12:23
I attest to the accuracy and
authenticity of this document
chandigarh