

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: January 15, 2019

1. RSA No.6043 of 2017 (O&M)

Chaman Devi

...Appellant

Versus

Amar Singh & another

...Respondents

2. RSA No.6045 of 2017 (O&M)

Chaman Devi

...Appellant

Versus

Subhash Chander & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Jagjit Gill, Advocate,
for the appellant in both the appeals.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two Regular Second Appeals bearing No.6043 and 6045 of 2017 as the common question of law and fact are involved.

RSA No.6043 of 2017 is arising out of the decision of Civil Suit No.928 of 2011 titled as “Amar Singh Versus Seema Rani & another” dated 29.11.2014 (hereinafter referred to “Suit No.1”), filed for specific performance of the agreement to sell dated 18.04.2011 on the premise that predecessor-in-interest of the defendants, namely, Lalit Mohan @ Lilat Mohan had become owner of the property by virtue of the sale deed dated

25.09.1968, which was agreed to be sold for a total sale consideration of ₹9,00,000/-against payment of earnest money of ₹ 4,00,000/-. Stipulated date for registration of the sale deed was fixed as 22.09.2011.

RSA No.6045 of 2017 is arising out of decision of Civil Suit No.21-C of 2012 titled as “Subhash Chander Versus Smt.Seema Rani & others” (for short “Suit No.2) filed for recovery of ₹ 7,00,000/-, the suit property was agreed to be sold for a total sale consideration of ₹ 10,00,000/- against payment of earnest money of ₹7,00,000/- and the stipulated date was fixed as 26.09.2011.

Agreement to sell was stated to be drafted by one Yadwinder Singh Advocate on the asking of Lalit Mohan. Plaintiff Amar Singh appeared before the office of the Sub Registrar, but the defendants did not come forward and came to know that Lalit Mohan, in the meantime, had expired and contacted his legal heirs also handed over a copy of the agreement, but they did not come forward. A legal notice dated 14.10.2011 was served, but again defendants did not come forward on the date given therein.

Defendant No.1 opposed Suit No.1 by stating that Lalit Mohan, during his life time, told about the execution of the agreement and earnest money of ₹ 4,00,000/-. It was further explained that there was no occasion for Lalit Mohan to appear on 22.09.2011 as he died on 05.09.2011.

Defendant No.2 in her written statement stated to have replied the legal notice on 12.10.2011 and opposed the suit by stating the agreement to sell to be forged document.

Plaintiff Amar Singh appeared himself as PW-5 and also examined PW-1 Om Parkash attesting witness, PW-2 Yadvinder Singh

Advocate Scribe, PW-3 Rittu Sethi, Stamp Vendor and PW-4 Prem Parkash Clerk and brought on record various documents, whereas Chaman Devi defendant No.2 examined herself as DW-1.

The trial Court decreed Suit No.1, but confined the decree to the refund of ₹ 4,00,000/- along with interest @ 9% per annum.

In Suit No.21-C of 2012, vendee Subhash Chander sought recovery of ₹ 7,00,000/- paid as earnest money on the basis of the agreement to sell dated 18.04.2011 as stipulated date was 26.09.2011. He came to know that Lalit Mohan had expired. His legal heirs were requested to get the sale deed registered, but they failed to do so despite having served with a legal notice dated 03.10.2011. The defendants also lodged a false FIR No.793 dated 11.10.2011 against plaintiff Subhash Chander in Police Station City Sirsa under Sections 323/452/506/34 IPC. He came to know that Lalit Mohan had executed another agreement to sell in favour of proforma defendant, i.e., Amar Singh plaintiff in Civil Suit No.1. In such circumstances, sought the recovery of the amount.

Defendant No.1 admitted the agreement to sell, whereas defendant No.2 opposed the suit by denying the same and receipt of the earnest money.

Amar Singh filed the written statement and propounded his agreement to sell dated 18.04.2011.

The trial Court dismissed Suit No.2, but the Lower Appellate Court decreed the suit and it is in these circumstances, two appeals have been filed.

Mr. Jagjit Singh, learned counsel appearing on behalf of the appellants submitted that the judgments and decrees of the courts below in

Suit No.1 and judgment and decree of the Lower Appellate Court in Suit No.2 are not sustainable in the eyes of law as Lalit Mohan was actually not the owner, but a Benamidar as all the expenses were borne by Chaman Devi, the mother as at the time of the purchase of the property he was minor. In fact, defendant No.2 was in actual possession of the house, which was purchased in the name of two minor sons, namely, Kamal Kant and Lalit Mohan. The aforementioned FIR was registered against Subhash Chander as he attempted to forcibly enter into the suit property. Plaintiffs miserably failed to prove the payment of earnest money and the intention to purchase and sell the suit property.

Simpliciter suit for recovery in the absence of primary relief of specific performance was not maintainable. By noticing the aforementioned facts, the trial Court dismissed the suit, but the Lower Appellate Court reversed the findings.

I have heard the learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions, for, the appellant had not been able to belie the signatures of Lalit Mohan, who entered into agreements to sell as he was major at that time. The terms and conditions of the agreement to sell have been proved through the testimony of the attesting witnesses, much less passing of the consideration. The courts below noticing all these facts did not grant the discretionary relief and confined it to the alternative relief. If there was some truth, particularly by noticing the admission of defendant No.1, the plea of benami in respect of transaction prior to 1988 can be taken but has to be proved through direct and cogent evidence. No evidence had been placed on record to establish the same.

For the reasons mentioned above, the arguments of the learned counsel are not able to bring the case within the realm of perversity. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeals are dismissed.

January 15, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No