

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

RSA No. 5950 of 2018 (O&M)

Date of Decision:09.01.2019

Kasturi Lal Babbar

.....Appellant

Versus

Satya Devi

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Rahul Bhargava, Advocate
for the appellant.

Mr. D.K.Bhatti, Advocate
for the respondent-caveator.

LISA GILL, J.

Appellant-defendant is aggrieved of judgment and decree dated 03.01.2018, passed by the learned Civil Judge (Jr. Division), Jalandhar, as well as judgment and decree dated 31.07.2018, passed by the learned Additional District Judge, Jalandhar, whereby suit filed by the plaintiff-respondent for agreement to sell dated 28.08.1991 has been decreed.

Brief facts necessary for the adjudication of the case are that plaintiff-respondent-Satya Devi filed a suit for specific performance on the basis of agreement to sell dated 28.08.1991 in respect to property bearing Quarter No. 74, situated at New Colony, Gopal Nagar, Jalandhar as detailed in the plaint. It was pleaded that the defendant who was the owner of the property in question, allotted to him by the Jalandhar Improvement Trust, Jalandhar, entered in an agreement to sell dated 28.08.1991 with the plaintiff. The agreement was signed in the presence of the witnesses. It was specifically mentioned that the entire sale consideration as mutually agreed upon stood received by the defendant. The exact amount of consideration

was not mentioned in the agreement though it was pleaded that a sum of ₹1,50,000/- was paid by the plaintiff. Vacant possession of the property in dispute was handed over by the defendant to the plaintiff on the same day i.e., on 28.08.1991. No specific date was fixed for execution of the sale deed while agreeing that the sale deed would be executed as and when the plaintiff requested for it. Plaintiff through her brother Charanjit, continued to be in possession of the property in dispute in an uninterrupted and peaceful manner. It was pleaded that the plaintiff's brother namely Charanjit was permitted to occupy the property in dispute. Charanjit was in occupation of the property even before the execution of the agreement to sell, therefore the defendant-appellant had in-fact agreed to sell the same to the plaintiff. Plaintiff was pleaded to be a government employee working for All India Radio, Jalandhar and residing at the staff colony of All India Radio Station. The plaintiff was ready and willing to perform her part of contract. Legal notice was served, requesting the defendant-appellant to execute the sale deed, but he refused. Hence the suit.

Defendant contested the suit. Various preliminary objections were raised in the written statement. Averments on merits were denied. It was stated that a false suit has been filed on the basis of a fraudulent and false agreement to sell dated 28.08.1991 which was never entered into by the defendant-appellant. It was denied that any earnest money or any consideration was received by the defendant. It was further denied that brother of the plaintiff namely Charanjit was in occupation of the property. Dismissal of the suit was prayed for.

Replication was not filed. From the pleadings of the parties,

following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to specific performance of the agreement to sell dated 28.08.1991 as prayed for? OPP
2. Whether the plaintiff is entitled for permanent injunction as prayed for?OPP
3. Whether present suit is not maintainable?OPD
4. Whether the plaintiff has no cause of action to file the present suit against the defendant?OPD
5. Whether the plaintiff has no locus standi to file the present suit?OPD
6. Whether the plaintiff is estopped from filing the present suit by her own act, conduct, admissions, omissions, latches, waivers and consequences?OPD
7. Whether the plaintiff has not approached to the court with clean hands?OPD
8. Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of necessary parties?OPD
9. Relief.

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

Learned trial Court on considering the facts and circumstances as well as the evidence on record concluded that the defendant was owner of the property in question. Possession thereof was admittedly with Charanjit. It was further concluded that parting of possession of the property by the defendant, as well as readiness and willingness of the plaintiff to execute her part of contract is proved. Accordingly, suit was decreed and the defendant was directed to execute the sale deed of the property in question in favour of the plaintiff and further defendant was restrained from interfering in the peaceful possession of the plaintiff over the property in question.

Appeal preferred by the present appellant-defendant was dismissed by the learned Additional District Judge, Jalandhar, vide judgment and decree dated 31.07.2018.

Aggrieved therefrom, present appeal has been filed by the appellant-defendant.

Learned counsel for the appellant vehemently argues that both the learned Courts below have erred in directing specific performance of agreement to sell dated 28.08.1991. First and foremost, plaintiff-respondent being a government employee with the All India Radio could not have purchased the property without prior sanction from the government, thus the agreement to sell is unenforceable. It is submitted that the plaintiff while deposing as PW-4 admitted that she is a government employee. She filed her income tax return but did not disclose regarding the purchase of the property. Moreover, passing of the consideration in this case is not proved. Agreement to sell dated 28.08.1991 is a patently fraudulent and a forged document. Plaintiff failed to prove the said document on record. There are material contradictions in the testimony of PW-5 which negates the case of the plaintiff. Learned counsel for the appellant in support of his contentions relies upon cases **Jagir Singh and another Vs. Chanchal Singh, died and represented by his legal heirs namely Jasjit Singh and others 1984, S.L.J. 471** and **Rakha Singh Vs. Gurbachan Singh son of Narain Singh, R.S.A No. 1072 of 1985, d/d 12.12.2013**. It is thus prayed that the present appeal be allowed and the judgments and decrees passed by the learned Courts below be set aside and the suit of the plaintiff be dismissed throughout.

Learned counsel for the respondent-caveator refutes the said arguments while submitting that plea of the respondent not having taken prior sanction has not been raised by the appellant at any stage. Said plea is

not even raised by the appellant in the grounds of the present appeal, therefore he is estopped from raising this plea at this stage. It is urged that in case such a plea had been taken at an earlier stage, the respondent would have been in a position to rebut the same and present her case in this respect at the initial stage. In-fact the defendant had received the entire consideration amount. Possession of the plaintiff-respondent's brother Charanjit is duly proved on record. In-fact Charanjit's possession is admitted. There is nothing on record, nor any explanation for the possession of the property being with Charanjit for such a long period, without any objection or protest by the appellant. It is thus prayed that this appeal be dismissed and both the judgements and decrees passed by the learned Court below be upheld.

I have heard learned counsel for the parties and have perused the record with their able assistance.

Both the learned Courts below have rendered a concurrent finding of fact to the effect that agreement to sell dated 28.08.1991 was duly executed between the plaintiff and the defendant-appellant. Possession of the property was admittedly with Charanjit i.e. the brother of the plaintiff. There is positive evidence on record to show that Charanjit was residing at the demised premises. Reference in this regard can be made to the testimonies of PW-1-Shashi Bala Mahajan, Assistant Passport Officer, Jalandar, PW-2-Ramesh Kumar, Officer, Punjab National Bank, New Grain Market, Jalandhar and PW-3-Ajay Malhotra, Clerk, Improvement Trust, Jalandhar. Ex.PW1/B is an application form in the name of Charanjit Luther, Ex.PW1/C is the certificate under Section 65-B of the Indian Evidence Act,

EX.PW1/D is the detail form of Charanjit Singh Luther, Ex.PW1/E is his identity verification report, Ex.PW1/F is the copy of his ration card, Ex.PW1/G and Ex.PW1/H are the copies of passports. Defendant-appellant was admittedly the owner of the suit property, same being allotted to him by the Improvement Trust, Jalandhar. There is indeed no merit in the argument that sale of the property could not have been made merely on the basis of the allotment letter, the conveyance deed never being executed by the Jalandhar Improvement Trust qua the property in dispute. DW-2 -Ajay Malhotra, Junior Assistant, Jalandhar Improvement Trust, has admitted that the property can be sold on the basis of an allotment letter. Appellant-Kasturi Lal Babbar, while deposing as DW-1 clearly admitted that the property in question belongs to him. DW-1 has further admitted that possession of the suit property is with Satya Devi till date. There is not a whisper of an explanation as to how DW-1 parted with possession of the property in favour of the vendee/her brother and why no action was ever taken by him for all these long years to take back possession thereof.

PW-5-Inderjit Singh, one of the attesting witness of the agreement to sell has testified in respect to the execution of the agreement to sell, Ex.P-1. He categorically stated that both the parties executed this document in his presence and in presence of the other witnesses. Contents of the agreement were read out to both the parties. Plea on behalf of the appellant, that the consideration amount not being spelt out specifically in the agreement to sell raises a finger of suspicion, cannot be countenanced. This is so for the reason that there is a categoric recital in Ex.P-1 that defendant-appellant received the full and final consideration in cash in the

presence of the witnesses and nothing is due against the respondent-plaintiff. Admittedly, possession of the property was handed over to the plaintiff. It is beyond comprehension that without having received the entire consideration amount any vendor would have parted with possession of his property and never raised any objection to the possession of a stranger to the property.

Doubtlessly, the appellant-defendant has failed to substantiate his plea that agreement to sell dated 28.08.1991, Ex.P-1, is a forged and fabricated document. There is not an *iota* of evidence on record to substantiate this plea.

Learned counsel for the appellant is unable to point out any material contradiction in the testimony of PW-5, which detracts from the case of the plaintiff.

Learned counsel for the appellant has vociferously argued that the plaintiff is a government employee, therefore in any case she could not have purchased the property in question without prior sanction from the government. She has filed her income tax returns, but not disclosed about the purchase of the property. Therefore, specific performance of an agreement to sell which is unenforceable should not be afforded. This argument is fallacious and not to be countenanced, hence rejected. This is so for the reason that first and foremost such a plea or objection has never been raised by the appellant-defendant at any stage. Perusal of the written statement, grounds of appeal before the learned First Appellate Court as well as the grounds of appeal in the present matter, stand testimony. Such an argument was not even raised before any of the learned Courts below. Moreover, possession of the property was admittedly handed over at the

time of execution of the agreement to sell and it would be for the authorities to take action, if any. Judgements relied upon by learned counsel for the appellant are not applicable to the facts and circumstances of the present case. In **Jagir Singh's** case (Supra), specific issues were framed by the learned trial Court in regard to the unenforceability of the contract on account of vendee being a government servant, thus barred from acquiring immovable property except with the previous sanction of the government. It would indeed be a travesty of justice to permit such a plea at this stage where it is proved that the appellant had parted with possession of the disputed quarter after receipt of the entire consideration amount and thereafter raised no objection thereto since 1991.

Learned counsel for the appellant-defendant 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.

There is no illegality, infirmity or perversity in the impugned judgments and decrees dated 03.01.2018 and 31.07.2018, passed by learned Civil Judge (Jr. Division), Jalandhar and learned Additional District Judge, Jalandhar, which calls of any interference by this Court.

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

09.01.2019
s.khan

[LISA GILL]
Judge

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