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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.6064 of 2018 (O&M)
Date of Decision: 07.05.2019

Manjit Singh (Deceased) and another
......Appellants

Vs

Jagdev Singh and others
....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. B.S. Bali, Advocate
for the appellants.

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RAJ MOHAN SINGH, J.

[1]. Plaintiffs/appellants are in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for declaration and permanent injunction.

[2]. Plaintiffs filed a suit for declaration to the effect that sale deed dated 27.10.2005 executed in favour of the assignees/defendants No.2 to 6 and further sale deed executed by defendants No.2 to 6 in favour of defendant No.7 are null and void. Plaintiffs specifically pleaded that they are entitled to recovery of Rs.2 lakhs on the basis of receipt Ex.P-2 which was meant for Eucalyptus/*Safeida* trees. Execution of receipt was proved by PW-2 Sant Kumar, in which it was admitted by

defendant No.1 that safeida trees of forest department were standing in the suit property and whenever the same will be removed, an amount of Rs.2 lakhs which was lying with him would be handed over to the plaintiff on cutting the safeida trees. Ownership of the plaintiffs was never in dispute. The property was sold in favour of assignees of defendant No.1 as per terms and conditions.

[3]. The plaintiffs have to stand on their own legs. Declaration for declaring the sale deeds to be null and void on account of non-passing of consideration of Rs.2 lakhs would depend upon firstly on the recital in the agreement to sell and secondly whether non-passing of consideration would result in declaring the sale deed to be null and void. Sale deeds Ex.P-5 to Ex.P-7 were executed with the consent of defendant No.1 in favour of assignees/defendants No.2 to 6. Plaintiffs have pleaded that at the time of execution of agreement to sell, it was agreed between the plaintiffs and defendant No.1 that an amount of Rs.2 lakhs would remain with defendant No.1 and the same was to be handed over to the plaintiffs after cutting the eucalyptus/safeida trees which were standing in the suit property.

[4]. Perusal of the sale deed Ex.P-4 would show that there is no mention of any such fact regarding retention of amount of

Rs.2 lakhs by defendant No.1 which was required to be paid to the plaintiffs after cutting of the safeida trees. There was no such recital made in the sale deeds, nor any such recital was made in the agreement. The alleged contention did not exist as the same was not proved on account of any inter se settlement between the plaintiffs and defendant No.1.

[5]. Plaintiffs have not brought on record any such evidence to establish that forest department had ever earmarked or numbered the trees standing in the suit property, nor any witness was examined from the department in order to corelate the aforesaid fact. At the first instance, defendants No.2 to 6 and defendant No.7 after execution of sale deeds Ex.P5 to Ex.P-7 became absolute owners of the suit property as there was no such condition incorporated in the sale deeds putting some contingency *qua* title of the vendees. The receipt Ex.P-2 cannot form basis of recovery or declaring the sale deeds to be null and void as there was no such recital in the receipt itself that the amount was retained by defendant No.1 and the same was payable to the plaintiffs after cutting the eucalyptus trees.

[6]. Plaintiffs claimed recovery of Rs.2 lakhs on the basis of Ex.P-2. Even if the document was exhibited that does not dispense with proof of its execution and legality in terms of requisite stamp duty. As per version derived on record from the

stand of the defendants, the sale consideration of sale deed Ex.P-4 was less in respect of 1¼ *Kanal* because of the trees standing at the site. The amount was withheld by defendant No.1 since the land measuring 1¼ Marlas was less i.e. sale deed was executed for less land because of standing trees. Acknowledgment of the payment would give rise to promise to pay and such an acknowledgment is required to be duly stamped under Schedule I, Article I of the Stamp Act. Since there is express promise to pay as per the case pleaded by the plaintiffs, therefore, the document/receipt Ex.P-2 cannot operate as an acknowledgment unless and until, the same is properly stamped as a bond. As the document according to the plaintiffs contained an admission of liability, therefore, sufficient stamp was required to be affixed.

[7]. The receipt in itself cannot be construed to be an acknowledgment of the defendant No.1 being condition precedent for payment in favour of the plaintiffs. The evidence led by the plaintiffs is discrepant in terms of cutting of eucalyptus trees by the forest department as none was examined from the forest department. Receipt Ex.P-2 cannot be led in evidence for want of sufficient stamps. Whether such a receipt and non-payment of amount in question would have effect of nullifying the sale deeds? The recital of the sale deed

pointed towards passing of consideration. Non-passing of consideration in any circumstance would not lead to nullify the sale deeds. Firstly there is no evidence on record and secondly once the registered instrument is executed and the same carries an endorsement to that effect and the seller had obtained the sale consideration from the purchaser, then there will be absolute payment of sale consideration which has to be rebutted by the seller by leading cogent evidence. Perfect title has been passed on to the vendees. In the event of non-payment of consideration or an amount of Rs.2 lakhs as alleged by the plaintiffs the remedy available with the vendor was only to sue for recovery of balance sale consideration or an amount of Rs.2 lakhs as allegedly agreed between the parties. The vendor cannot avoid sale. Payment of entire consideration was not the condition precedent for completion of sale by passing of title in view of Section 54 of the Transfer of Property Act. The sale is defined as a transfer of ownership in exchange for a price paid or promised or partly promised. In any case, non payment of consideration would only entitle the vendor to sue for balance price by way of filing a suit for recovery. In this context the ratio of ***Kaliaperumal vs. Rajagopal and another, 2009(2) R.C.R. (Civil) 471*** can be relied.

[8]. The law laid down by the Hon'ble Apex Court is the law

of the land. The expression 'law' includes judicial precedents of the Hon'ble Apex Court. The authoritative pronouncements of the Hon'ble Apex Court is the law of land. Reference can be made to ***Bhargvi Constructions and another vs. Kothakapu Muthyam Reddy and others, 2017(4) R.C.R. (Civil) 359***.

[9]. For the reasons recorded hereinabove, I find that the findings recorded by the Courts below are not erroneous. There cannot be any re-appreciation of the evidence on record. The findings are not on account of any misreading of evidence or suffered with perversity. No question of law worth consideration is involved in the present appeal. The appeal is found to be totally devoid of merits and is accordingly dismissed in *limine*.

[10]. Since the appeal is dismissed in *limine*, therefore, there is no need for passing any order in the pending applications. The same are accordingly disposed of.

May 07, 2019 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No