

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.942 of 2018 (O&M)
Date of Decision : 22.10.2019

Darshana

.....Appellant

Versus

Darshan Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Charanpreet Singh, Advocate for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the appellant-plaintiff was decreed by the trial Court vide judgment and decree dated 07.01.2015, but as in appeal the said decree was set aside, and vide impugned judgment and decree dated 19.05.2017, the suit was dismissed, the appellant-plaintiff is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for a decree for recovery of Rs.12,50,000/- that is prevailing rate of the suit land along with interest @ 18% per annum and if the plaintiff was not found entitled thereto thus, in the alternative a decree for an amount of Rs.87,500/- i.e. sale consideration realized pursuant to the sale deed executed by defendant No.1 being General Power of Attorney of the plaintiff in favour of defendant No.2 along with interest be passed.

In brief, the case set out by the plaintiff was that Mangal Singh father of the plaintiff was owner of a land measuring 4 kanals being 1/3rd

share out of the total land measuring 12 kanals 1 marla, situated in village Daha, District Karnal. Post death of Mangal Singh on 23.03.1981, the mutation of his inheritance was entered in favour of his heirs including plaintiff on 28.03.2007, in equal share. Accordingly, the plaintiff became owner of a land measuring 1 kanal. For, she was married at Patiala and unable to cultivate the land she appointed defendant No.1 as her attorney being a close relative to look after and cultivate the land of her share. As a result, defendant No.1 gave the land on theka to defendant No.2. However, on 11.03.2012, when plaintiff visited village Daha she asked defendant No.2 as she herself wanted to cultivate the suit land and, therefore, possessions of the suit property be handed over to her. For, defendant No.2 refused to acknowledge the claim of the plaintiff and rather proclaimed to have purchased the suit property pursuant to a sale deed dated 02.01.2008, thus, the suit.

In the written statement filed by the defendant No.1, it was wrong that she was unable to cultivate the suit land, for, she was residing at Patiala. In fact, the suit property could not be cultivated for, it was in possession of the father of the defendant No.2 and thereafter with defendant No.2, for the last more than 50 years. At any rate, the share of the plaintiff in the estate of late Mangal Singh worked out to only 1 kanal, and thus, it could not be used for cultivation. Further, brother and sisters of plaintiff had already sold their share in the joint holding to defendant No.2, vide sale deed dated 26.04.2007. It was incorrect that defendant No.1, in connivance with defendant No.2, had sold away the suit property for a meagre sale

consideration, whereas post execution of the sale deed plaintiff received the sale consideration, and thus, the suit was liable to be dismissed.

The trial Court, on consideration of the matter concluded that execution of GPA (Ex.P1) was duly proved. Admittedly, the suit land was sold for Rs.87,500/- by defendant No.1 in favour of defendant No.2 on behalf of the plaintiff and defendant No.1 had received the sale consideration from defendant No.2. But the grievance of the plaintiff was that defendant No.1 never passed on the sale consideration to her, though case of defendant No.1 was that he handed over the sale consideration to the plaintiff. However, no cogent evidence was led by defendant No.1 to prove payment of sale amount. Defendant No.1, who was an educated person and, therefore, ought to have obtained a written instrument as regards handing over the sale consideration to the plaintiff. Therefore, the suit was decreed.

However, upon a due and comprehensive analysis of the matter in issue and the evidence on record, the Appellate Court, concluded: although, the case set out by the plaintiff was that she never authorized defendant No.1 for selling the suit property, for, he was appointed as her attorney only to look after and cultivate the suit land but a perusal of the alleged power of attorney Ex.P1 revealed that defendant No.1 i.e. Darshan Singh was fully authorized to transfer her property by way of sale, gift, mortgage or in any other manner, he deemed fit and to receive full and final consideration. Further, Avtar Singh (PW4), brother of the plaintiff, admitted in his cross-examination that plaintiff Darshana had told him

about the non-payment of sale consideration by defendant No.1 by 5-6 years ago and the said witness had deposed in Court on 22.03.2014. Thus, the presumption was that he had come to know of the execution of the sale deed in the year 2008 itself. Likewise, even the stand of the plaintiff qua the knowledge of the execution of the sale deed dated 02.01.2008, was contradictory, for, in her plaint she alleged to have acquired knowledge of the sale deed on 11.03.2012, when she visited village Daha, whereas in her cross-examination she deposed that she was told by defendant No.1 with respect to the execution of the sale deed. Still further, she also stated that she came to know of sale of the suit property through her sisters and brother when they filed a suit against defendant No.2 Rajinder Kumar. However, copy of document (Ex.P8) revealed that the sisters of the plaintiff namely Raj Rani and Surjit Kaur as also her brother Avtar Singh had filed a suit against Rajinder Kumar on 16.08.2010. Whereas Avtar Singh in his testimony conceded notice of the sale deed about 5 to 6 years ago i.e. somewhere in the year 2008. In any case, the sale deed was a public document and on its registration and being acted upon against the effected parties it would be deemed to be in knowledge of the parties concerned. Therefore, the limitation to assail the said document would run from the date of registration. Significantly, in the present suit plaintiff had not challenged the sale deed dated 02.01.2008, thus it could not be presumed that it was executed by defendant No.1, without her consent. Further, in terms of the Section 3 of the Transfer of Property Act, the plaintiff was having notice of registration of the sale deed, and thus, the limitation to file

the suit would commence from 02.01.2008 itself, whereas the present suit was filed on 14.06.2012, and was thus, hopelessly time barred. Even otherwise, defendant No.1 in his affidavit Ex.D1/A categorically deposed that he had handed over the sale consideration to the plaintiff on 05.01.2008 at his house in the presence of his wife, son and even husband of the plaintiff was also present. Likewise, even Darshan Singh (DW1) and Kuldeep Singh (DW2) testified in their depositions that husband of the plaintiff was present when the sale consideration was passed on to the plaintiff. That being so, the plaintiff ought to have examined her husband to lend credence to her claim. However, except self-serving statement of the plaintiff and her brother no cogent evidence was led to substantiate her case. Therefore, in the circumstances, it could not be presumed that defendant No.1 did not make the payment of sale consideration to the plaintiff after execution of the sale deed dated 02.01.2008.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusion concurrently recorded by the Appellate Court was either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent finding recorded by the Appellate Court. The appeal being devoid of merit is accordingly dismissed.

22.10.2019

*Manoj Bhutani***(ARUN PALLI)
JUDGE**Whether speaking/reasoned
Whether reportableYes/No
Yes/No