

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 27 of 2018 (O&M)
Date of Decision: 10.05.2019

Satnam Singh

...Appellant

VERSUS

Sarabjit Kaur and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. A.P.S. Sandhu, Advocate
for the appellant.

Mr. Rajinder Sharma, Advocate
for respondents

SURINDER GUPTA, J.

Appellant filed suit for specific performance of agreement dated 07.03.2007, which was decreed *ex parte* vide judgment and decree dated 16.11.2015 passed by Additional Civil Judge (Senior Division), Amritsar. Defendants filed appeal, which was accepted by Additional District Judge, Amritsar and the case was remanded to learned trial Court for deciding the same afresh. Ist Appellate Court while remanding the case observed that proceedings in suit by learned trial Court has resulted in miscarriage of justice and denial of opportunity to defendants-respondents to contest the suit on merit.

2. Facts of the case in brief is that plaintiff-Satnam Singh filed suit for specific performance of agreement to sell dated 07.03.2007, executed by defendants. It was alleged that entire sale consideration was paid to defendants, who executed general power of attorney, registered Will, receipt of payment of sale consideration on 07.03.2007. General power of attorney as well as Will dated 07.03.2007 were got duly registered

in the office of Sub-Registrar. Defendant no. 1-Sarabjit Kaur required money for marriage of her daughter, namely, Jagdip Kaur (defendant no. 2). Plaintiff, when approached defendants with the request to get the sale deed executed, they did not accede to his request, hence this suit.

3. Defendants contested claim of plaintiff *inter alia* pleading that plaintiff is in habit of fabricating documents and filing suit. Defendant no.1 is widow and her daughters are married in foreign countries. Her son, Arwinder Singh, had died on 11.01.2003 and her husband also died on 06.07.2006. Mother-in-law of defendant no. 1 had also died 25 days before death of her husband and thereafter, defendant no. 2 was married on 11.03.2007. Plaintiff represented that in order to get the mutation after death of Jaspal Singh, sanctioned, defendants should give power of attorney in his favour so as to complete the formalities. They agreed to execute power of attorney in favour of plaintiff as they were considering him to be their family member and were busy with marriage of defendant no. 2. Later they came to know that he got inserted clause of right to sell the suit property in power of attorney and also got executed a Will, which was later on cancelled. Defendants have never agreed to sell the suit property to plaintiff, which is worth crores of rupees and could not be sold for meager amount of ₹12,20,000/-.

4. I have heard learned counsel for parties and have perused the paper-book and documents placed on file with their assistance.

5. Perusal of file shows that after framing of issues, case was fixed for evidence. On 19.05.2011, affidavits of PW-1 and PW-2 were tendered in evidence as their examination-in-chief and their cross-examination was deferred. Thereafter, aforesaid PWs and no other evidence

of plaintiff was produced on following dates:-

- (i) 08.09.2011
- (ii) 28.11.2011
- (iii) 22.02.2012
- (iv) 19.04.2012
- (v) 29.05.2012
- (vi) 31.07.2012
- (vii) 15.11.2013

6. On 18.03.2013, again no PW was present and the plaintiff-appellant was directed to produce witness before Local Commissioner to whom case was referred for recording of evidence and to submit report on 27.05.2013. On 27.05.2013, Local Commissioner reported that no PW appeared before him for cross-examination and the case was adjourned to 06.08.2013, on which date, one PW (PW-3) was examined and case was again adjourned for evidence of plaintiff for 23.08.2013. Thereafter, proceedings could not be taken up for one reason or the other upto 28.01.2014 and the case was again posted for 18.02.2014 for evidence of plaintiff. On 18.02.2014, no PW was present. On the next date i.e. 13.03.2014, PW-2 Balbir Pal appeared but requested for adjournment and the case was adjourned for 24.03.2014. On 24.03.2014, again no PW was present and case was adjourned to 03.04.2014, on which date defendants were proceeded *ex parte* as none had appeared on their behalf. On 24.04.2014, plaintiff closed the evidence after examining himself as PW-4. In the meanwhile, application seeking setting aside of *ex parte* proceedings had been filed on 09.04.2014, which was not taken up on 24.04.2014 when Additional Civil Judge (Sr. Division) had proceeded to record evidence and allowed plaintiff to close the evidence. It was required to first consider application filed by defendants seeking setting aside of *ex parte*

proceedings and then to proceed further with recording of evidence of plaintiff. The application of defendants seeking setting aside *ex parte* proceedings remained pending after filing on 09.04.2014 to 25.01.2015 for reply and argument and during this period 13 opportunities were granted by learned trial Court for reply and arguments. Defendant no. 1, who had moved application seeking setting aside of *ex parte* proceedings, was again proceeded *ex parte* on 22.01.2015 and thereafter the case remained pending for arguments upto 04.09.2015, on which date, application was moved on behalf of defendants for setting aside *ex parte* proceedings and for restoration of their earlier application. This application was dismissed on 04.11.2015. Thereafter, on 16.11.2015, four additional issues were framed as follows:-

- “5A Whether the defendants have executed agreement to sell dated 07.03.2017 in respect of suit land in favour of plaintiff after receiving the entire sale consideration of ₹12,20,000/- as alleged? OPP.
- 5B Whether the plaintiff has always been and is still ready and willing to perform his part of contract? OPP
- 5C If issue no. 5A and 5B stand proved in favour of plaintiff, whether he is entitled to the relief of specific performance of agreement to sell dated 07.03.2007 as prayed for? OPP
- 5D Whether the agreement to sell dated 07.03.2007 is a forged and fabricated document? OPD

7. On the same day i.e. 16.11.2015, arguments were heard and case was finally decided with observation that no fresh additional evidence of plaintiff on aforesaid issues is required.

8. After framing of issues on 08.05.2009, case remained pending for evidence of plaintiff for a considerably long period and during this

period, counsel for defendants had been regularly appearing. It was on 03.04.2014 that defendants were proceeded *ex parte* and they moved application for setting aside *ex parte* order dated 09.04.2014, which was again kept pending and then defendants were again proceeded *ex parte*. They moved application for setting aside *ex parte* proceedings and restoration of their earlier application on 04.09.2015, which was dismissed. Thereafter, additional issues were framed and findings against defendants were recorded on those issues. In case application seeking setting aside of *ex parte* proceedings had been dismissed by learned trial Court vide order dated 04.11.2015, they could be allowed to join proceedings at that stage and opportunity to lead evidence on additional issues no. 5A to 5D, framed on 16.11.2015, on which date suit was decreed.

9. Keeping in view facts and circumstances of the case, I am of the opinion that Ist Appellate Court has rightly observed that procedure adopted by learned trial Court has resulted in failure of justice and remanded the case to get the same decided on merit after providing opportunity to both the parties to lead additional evidence. Order passed by Ist Appellate Court calls for no interference in this appeal and the same is affirmed.

10. This appeal has no merit and the same is dismissed.

May 10, 2019

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No