

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.A.No.15-C of 2018 (O&M) in/and
RSA No.2797 of 1984
Date of Decision: May 13th, 2019

Gurdip Kaur (since deceased) through L.Rs

...Appellant

Versus

Mohinder Singh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: None for the appellant.

Mr. J.S.Lalli, Advocate,
for respondent No.1.

AMIT RAWAL, J.

CM No.2997-C of 2018 in RA No.15-C of 2018

Prayer in the application is for condonation of delay of 691 days in filing the review application on the premise that the applicant-respondent No.1 had filed a Special Leave Petition before the Hon'ble Supreme Court which was disposed of after condoning the delay with a direction to the applicant to move a fresh review petition before this Court. Thereafter, the applicant engaged a new counsel and, therefore, in this process, delay of 691 days in filing the present review application has occurred which is not intentional. The application is supported by an affidavit.

For the reasons mentioned in the application, the delay of 691 days in filing the review application is condoned.

CM stands disposed of.

This Court, vide order dated 30.03.2016, allowed the Regular Second Appeal preferred by the non-applicant/plaintiff against the judgment and decree of the Lower Appellate Court, whereby the decree for possession by way of specific performance of the agreement to sell granted by the trial Court was set-aside and the relief was converted into recovery of ₹ 4,000/-, i.e., ₹ 2,000/- paid as earnest money and ₹ 2,000/- as damages.

Against the aforementioned order, review petitioner-respondent No.1 filed a Special Leave Petition before Hon'ble the Supreme Court and vide order dated 09.10.2017, it was disposed of in the following manner:-

“Heard learned counsel for the petitioner.

Delay condoned.

The question whether Agreement dated 11.07.1978 had already expired, as held by the lower Appellate Court, does not appear to have been properly appreciated by the High Court. In this view, we permit the petitioner to file a fresh review petition so that the High Court may consider this aspect specifically on merits. Till further order of the High Court, status quo about possession be maintained.

The special leave petition(s) is disposed of.”

In pursuance to the aforementioned order, review application has been filed and notice was sent to the legal heirs of the non-applicant/appellant, Gurdip Kaur, who were brought on record vide order dated 26.10.2018 passed in Civil Misc.No.16147-C of 2018. As per the office report, respondent No.1 (i, iv-a, ii, iii, iv-b and iv-c) have been served, but there is no representation on their behalf.

Mr. J.S.Lalli, learned counsel for the review petitioner-respondent No.1 submitted that agreements dated 11.07.1978 and

02.11.1979 were two distinct ones. Attention of this Court was drawn to the translated copies of the agreements, Annexures A1 and A2 (attached with earlier review petition bearing No.52-C of 2017) by alleging it be not in continuation. Defendant No.2 acquired the right in the property measuring 4 kanals on the basis of the judgment and decree dated 03.08.1980 (Ex.D5) and this fact was not brought to the notice of this Court and impression was given that both the agreements are in continuation, i.e., 02.11.1979 was an extended date.

I have gone through the agreements Annexures A1 and A2 and their recital reveals that they were two distinct agreements. There is error apparent on record. Accordingly, the order dated 30.03.2016 is recalled and the appeal is restored to its original number and taken up for hearing.

Review application stands allowed.

RSA No.2797 of 1984

Appellant-plaintiff sought the specific performance of the agreement to sell dated 11.07.1978 allegedly extended on 02.11.1979 in respect of land measuring 4 kanals 10 marlas and in the alternative for recovery of ₹ 4,000/- on the premise that Dharam Singh-defendant No.1 (respondent No.2 in the present appeal, service dispensed with), was owner of the land measuring 29 kanals 9 marlas situated in Village Islampur. On 11.07.1978, he executed an agreement in respect of the aforementioned land in favour of the plaintiff for a consideration of ₹18,000/-. A sum of ₹ 2,000/- was paid as earnest money and the remaining sale consideration was to be paid on 25th Maghar 2031 and 20th Maghar 2035 B.K. Dharam Singh-defendant No.1 sold the remaining land measuring 8 kanals to the plaintiff for a sum of ₹ 12,000/- vide sale deed dated 03.11.1979. A sum of ₹ 2,000/-

paid as earnest money, as per the agreement, was not adjusted in the sale deed, therefore, the agreement dated 11.07.1978 was kept alive and continued to remain intact in respect of remaining land measuring 4 kanals 10 marlas. It was clarified that the agreement dated 11.07.1978 was subsequently limited to 12 kanals 10 marlas of land. However, on 02.11.1979, Dharam Singh-defendant No.1 extended the agreement dated 11.07.1978 and agreed to sell land measuring 4 kanals 10 marlas for a sum of ₹ 6,000/- and a sum of ₹ 2,000/-, paid as earnest money, was to be adjusted and fixed the date for execution and registration of the sale deed as 03.11.1980. Plaintiff, through her son Rachhpal Singh, moved an application before the Sub Registrar qua readiness and willingness and served the notice dated 18.08.1981. The defendants did not come forward and, therefore, filed the suit.

Defendant No.1 Dharam Singh filed the written statement and admitted extension of the agreement, but limited to 12 kanals 10 marlas, out of which he sold 8 kanals to the plaintiff and the remaining 4 kanals 10 marlas was to be sold for a sum of ₹ 6,000/-.

Defendant No.2 contested the suit on the premise that defendant No.1 did not execute the agreement dated 11.07.1978, rather entered into an agreement with defendant No.2 on 18.03.1979 to sell the land measuring 4 kanals min Daccan, out of 8 kanals comprising Khewat No.8, Rect.No.5, Killa No.19 for a sum of ₹ 6,000/-, out of which ₹ 1,000/- was paid and the rest of the consideration was to be paid at the time of registration of the sale deed. The sale deed was to be registered by 15th Maghar Sambat 2036, i.e., 30.11.1979. On 19.10.1979, defendant No.1 extended the performance of the agreement and claimed another sum of

₹700/- from him which was extended to Ist Phaggan 2036 BK, i.e., 13.02.1980. On the said date, defendant No.2 appeared before the Sub Registrar, but defendant No.1 did not appear. On 27.02.1980 he was served with a legal notice. Dharam Singh sought the extension of time for execution of the sale deed. On 19.03.1980, Dharam Singh executed an agreement with him and undertaken to execute the sale deed on or before 19.04.1980. As on 19.04.1980 and 20.04.1980 office of the Sub Registrar was closed, he went to the office of the Sub Registrar on 21.04.1980, but defendant No.1 did not come forward.

Since the parties were at variance, the trial Court framed the following issues:-

- “1) Whether the plaintiff was ready and willing to perform her part of the agreement dated 11.7.78? OPP*
- 2) Whether defendant no.1 executed agreement dated 18.3.79 in favour of defendant no.2? If so, its effect? OPD*
- 3) If issue no.2 is proved, whether defendant no.2 had no notice of the earlier agreement in favour of the plaintiff? OPD*
- 4) Whether the suit is not maintainable in the present form? OPD*
- 5) Whether the agreement dated 11.7.78 was fraudulent and fabricated and executed in collusion between the plaintiff and defendant no.1 as alleged? If so its effect? OPD*
- 6) Whether the suit land was mortgaged with Rakesh Kumar for Rs.4000/- prior to 11.7.78? If so its effect? OPD*
- 7) Whether the sale of part of land subject of agreement dated 11.7.78 has frustrated the entire agreement and the plaintiff is not entitled to get specific performance as alleged?*
- 8) Relief.*

Both the parties led evidence in support of their pleadings.

Plaintiff examined five witnesses and brought on record Ex.P1

and Ex.P2, the agreement and the alleged endorsement on the back dated 02.11.1979 modifying the agreement Ex.P1.

On the other hand, the defendants also examined five witnesses, including Kanta Devi wife and general attorney of defendant No.1 as DW-1 and brought on record attorney Ex.D1/A.

The trial Court, on the basis of the aforementioned oral and documentary evidence, decreed the suit for possession by way of specific performance in respect of land measuring 4 kanals 10 marlas. Defendant No.2 preferred an appeal before the Lower Appellate Court. The Lower Appellate Court dismissed the suit by reversing the findings and converted the decree for recovery of ₹ 4,000/-, i.e., ₹ 2000/- as earnest money and ₹2,000/- as damages. It is in these circumstances, the present appeal has been filed.

As per the memorandum of appeal, on behalf of the appellant, it has been asserted that judgment and decree of the Lower Appellate Court is not sustainable in the eyes of law as there was misinterpretation qua the extension of agreement dated 02.11.1979. It was a new agreement as noticed by the Lower Appellate Court. Documents have to be interpreted to give proper meaning reflecting the intention of the parties and, admittedly, parties to the agreement dated 02.11.1979 meant the extension of time and not the execution of fresh agreement. Mohinder Singh had entered into a fresh agreement on 19.03.1980 which was much after 02.11.1979. The Lower Appellate Court erred in law in coming to the conclusion that the agreement dated 11.07.1978 was non existent. There was no issue nor any evidence on that part.

Mr. J.S.Lalli, learned counsel for respondent No.1 submitted

that there were two distinct agreements dated 11.07.1978 and 02.11.1979. Prior to the second agreement dated 02.11.1979, defendant No.1 had entered into an agreement with respondent No.1 (defendant No.2-review petitioner) on 18.03.1979 in respect of land measuring 4 kanals bearing Khasra No.5R/19 (8-0), i.e., Ex.P2 and Ex.D1. A perusal of Ex.P2 and Ex.D1 shows that the agreement in favour of defendant No.2 was prior in time, therefore, the decree for specific performance in favour of the plaintiff could not have been ordered. Agreement Ex.P2 dated 02.11.1979 was altogether different. It is a new agreement as the previous agreement had already been put to an end and, thus, cannot be construed to be extension of previous one. Agreement dated 18.03.1979 Ex.P1 was executed first on 19.10.1979 and it was to be performed upto 30.11.1979 and then to 13.02.1980 and then till 19.04.1980. On 18.03.1979, Gurdip Kaur was not at all in picture and, thus, urged this Court for dismissal of the appeal by restoring the judgment and decree of the Lower Appellate Court.

I have heard the learned counsel for respondent No.1, gone through the paper book, records of the courts below and of the view that the following Substantial Question of Law arises for determination by this Court:-

“Whether the agreements dated 11.07.1978 (Ex.P1) and 02.11.1979 (Ex.P2) were two distinct agreements or extension of the first agreement and what is the effect of agreement dated 18.03.1979.”

The translated copies of agreements to sell Annexures A-1 and A-2 read as under:-

“ANNEXURE A-1

AGREEMENT TO SELL

I, Sh.Dharam Singh son of Bachitar Singh son of

Nanak Singh am resident of Aslampur Tehsil Gurdaspur. That I have my landed property situated at village Aslampur, Tehsil Gurdaspur measuring 25K-9M bearing Khasra No.5R//18 (5-4), 13/1 (2-10), 19 (8-0), 5R//12(7-2), 11(2-13), which is earlier on mortgage. That I have struck a deal to sell this land to Smt.Gurdip Kaur wife of Subedar Ajit Singh son of Sh.Fauja Singh resident of Wajirpur Afgana Tehsil Gurdaspur for Rs.18,000/- half of which comes to Rs.9000/- have taken advance earnest money of Rs.2000/- in cash half of which comes to Rs.1000/-. The remaining amount will be taken at the time of executing the registry by transferring the land to the vendee. The registry will be executed till 25 Maghar 2035. On not executing the registry I will return earnest amount of Rs.2000/- along with fine of Rs.2000/-. In the event the vendee will not execute the registry then the earnest money will be forfeited. The vendee can also execute the registry through the court. All the expenditure will be borne by the vendee. Therefore this agreement has been written so that it can be used at a relevant time dated 11.7.78. The contents have been read over and are correct.

Sd/-Balwant Singh Sarpanch, Keeri Afgana,

Sd/-Dharam Singh,

Sd/-Smt.Gurdip Kaur and Rashpal Singh,

Sd/-Varinder Kumar son of Hansraj.”

ANNEXURE A-2

Vide agreement to sell we the residents of village Aslampur Tehsil Gurdaspur by striking a deal to sell the land measuring 25 kanal 9 marla bearing Khasra No.5R//18 (5-4), 13/1(2-10), 19 (8-0), 12(7-2), 11 (2-13), for consideration amount of Rs.18,000/-, the vendor have taken Rs.2000/- as earnest money from the vendee. Now we both the parties with our consent and pleasure in presence of the witnesses have executed the agreement instead of Rs.18,000/- of above area of 25K-9M of 12K-10M from No.5R//12 4K-10M and 5R//19. The remaining land has been left by vendee and not to purchase the

land. Out of the total area measuring 12K-10M the vendee has taken 08K-0M from No.5R//12 (7-2) only 4K-0M and from 5R//19 (8-0) 4K-0 he may execute the registry if he did not execute then the bargain will be considered as cancelled and out of remaining 4-10 from No.5R//12 (7-3) 0-10M and from 5R//19 (8-0), 4K-0 will be executed till dated 3.11.80. Now we are fully bound for this agreement, the party who will retract will give fine of Rs.2000/- to the other party. The earnest money of Rs.2000/- will be adjusted in the second registry. The vendee can also execute the registry through the Court of Law. Therefore this agreement has been written so that it can be used at a relevant time. Dated 2.11.79. The contents of Vasika have been read over and acknowledge it to be correct.

RTI Devi wife of Dharam Singh,

Sd/-Dharam Singh

Sd/- Rashpal Singh

Sd/-Varinder Kumar son of Hansraj.”

From the plain and simple reading of the aforementioned agreements, it cannot be construed to be an extension of the agreement, but it was a separate agreement for land measuring 8 kanals. Dharam Singh vendor had already executed a sale deed dated 03.11.1079 in favour of Gurdip Kaur plaintiff. The existence of the agreement dated 18.03.1979 has been proved on record and its extension and the most important factor which the trial Court did not take into consideration was that respondent No.1 (defendant No.2) became owner by virtue of the decree dated 03.08.1980 (Ex.D5) in a suit for specific performance bearing No.130 of 1980.

Once the vendor had already sold 8 kanals of land, the agreement dated 11.07.1978 had become extinct. It was not an extension, therefore, the plaintiff could not seek the performance of the same in view

Regular Second Appeal No.2797 of 1984 (O&M) { 10 }

of the fact that respondent No.1 herein and defendant No.2 before the trial Court was holder of a previous agreement, i.e., 18.03.1979. Gurdip Kaur was not in existence, so the credence has to be given to the person having the first agreement which has been proved on record.

In view of what has been observed above, I agree with the findings of the Lower Appellate Court confining it to the refund of the amount, noticed above. The Substantial Question of Law is, thus, answered in favour of respondent No.1 (defendant No.2) and against the appellant-plaintiff.

Regular Second Appeal stands dismissed.

May 13th, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No