

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3632 of 2016 (O&M)

Date of Decision: 03.02 .2020

Smt. Krishna

... Appellant(s)

Versus

Saroj Rani

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Tribhvan Dahiya, Advocate
for the appellant.

Mr. Ajay Jain, Advocate
for the respondent.

Anil Kshetarpal, J.

An interesting issue needs consideration. The question is whether oral evidence can be considered for the purpose of contradicting, varying, adding to, or subtracting from the terms of a registered document. Section 92 of the Indian Evidence Act, 1872 (hereinafter referred to as “the Act”) is extracted as under:-

“92. Exclusion of evidence of oral agreement.-When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso(1) Any fact may be proved which would invalidate

any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso(2) The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso(3) The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso(4) The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso(5) Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso(6) Any fact may be proved which shows in what manner the language of a document is related to existing facts”.

On plain reading of proviso (4) to Section 92, it is apparent that

if a contract has been registered according to the law in force, the existence

of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of the property shall not be admissible in evidence. The proviso (4) to Section 92 is applicable even if the document is not required to be registered. The phraseology used in proviso (4) to Section 92 deals with two different eventualities. Thus, the evidence of an oral agreement or modifying the terms of written contract, grant or disposition of the property is not admissible where the document has been registered in accordance with the law applicable. The oral agreement modifying the terms of a contract in writing registered with the authorities as per Registration Act, 1918 would stand excluded. It is not necessary that the document should be one which is compulsorily required to be registered as per the law applicable.

Now let us examine the case on merits. The defendant/appellant has filed the present regular second appeal against a detailed judgment passed by the learned first Appellate Court. The plaintiff had filed a civil suit seeking a decree for specific performance of the agreement to sell dated 19.03.2007. It will be noted here that the execution of the agreement to sell, which is registered, dated 19.03.2007 with respect to a plot measuring 100 square yards on receipt of earnest money amounting to ₹ 3,35,000/- out of total sale consideration of ₹3,45,000/- is not disputed. On plain reading of the agreement to sell, which is an admitted document, it is apparent that the registration of the sale deed was not possible as there was some restriction on the execution and registration of the sale deed at that point of time. It was provided that whenever the government permits the registration of the sale deeds, the parties would remain bound to get the sale

deed executed. It was further provided that if any “No Objection Certificate” is required, the same shall also be applied and obtained by the defendant. As noted above, only ₹ 10,000/- remained to be paid out of total sale consideration of ₹ 3,45,000/-.

The learned first Appellate Court has, on appreciation of evidence, found that the plaintiff was ready and willing to perform her part of the contract and in fact it is the defendant who was at fault. At this stage, it will be noted here that the original agreement to sell had been torn. It is the case of the plaintiffs that the defendant called her and on the pretext of getting the sale deed registered, took the registered agreement to sell from the plaintiff and thereafter, torn it. Whereas the stand of the defendant is to the effect that the agreement to sell was torn on return of the earnest money. In that context, the legal question has been examined in the initial part of the judgment. It is proved on the file that defendant No.1 was accompanied by Pardeep, who was admittedly a close relative of the defendant. He is also a witness to the execution of the agreement to sell. He claims that he has witnessed the cancellation of the agreement by destroying (tearing). He is not an illiterate person. Still further, the stand taken by the defendant that the plaintiff no longer wanted to purchase the property as the sale deed of the aforesaid plot could not be registered at that point of time has been found false by the learned first Appellate Court. The learned first Appellate Court has found that once in the registered agreement to sell, which is an admitted document between the parties, it is specifically recited that the registration of the sale deed is not possible and the parties would get the sale deed registered only after the government permits the registration of the sale

deeds and the parties did not prescribe any time for execution and registration of the sale deed. Hence, the plea of the defendant was found false.

This Court has heard learned counsel for the parties and with their able assistance, gone through the judgment passed by the Courts below.

There is another fact which lends credence to the case set up by the plaintiff. The defendant became owner of the plot in question vide registered sale deed dated 29.04.2005. The plaintiff produced the aforesaid original sale deed in the present suit. It is the case of the plaintiff that the aforesaid sale deed was handed over to her by the defendant at the time of execution and registration of the agreement to sell. If the agreement was, in fact, cancelled by destroying (tearing) on return of the earnest money, the original title document with respect to the property in dispute would have been taken back by the defendant. Further, no reliable evidence has been produced by the defendant to prove that an amount of ₹ 3,45,000/- stands refunded.

Keeping in view the aforesaid facts, there is no ground to interfere.

Dismissed.

(Anil Kshetarpal)
Judge

February 03, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No