

In the High Court of Punjab and Haryana at Chandigarh

**RSA- 940 of 2019 (O&M)
Date of Decision:9.1.2020**

Kailash Devi and another

---Appellants

vs.

Udai Ram and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sanjay Mittal, Advocate
for the appellants

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for possession by way of specific performance of agreement to sell dated 16.2.2011 executed by Sh. Pyare Lal, predecessor-in-interest of the appellants, was decreed by the trial court vide decree and judgment dated 21.9.2015 and appeal preferred by unsuccessful appellants was dismissed by the Additional District Judge, Rewari.

Briefly stated, case of the respondent-plaintiff is that Sh. Pyare Lal entered into agreement to sell the suit property measuring 8 kanals for sale consideration of Rs. 9,00,000/- out of which Rs. 6,00,000/- were received as earnest money on 16.2.2011, the day agreement of sale was executed. The sale deed was agreed to be executed on 20.1.2012.

Unfortunately, Pyare Lal died on 9.9.2011 before arrival of target date. On 7.12.2011, respondent went to the house of appellants and asked them to execute the sale deed on the date fixed and they ensured to do the same. On 20.1.2012, he remained present in the office of Sub Registrar, Bawal for execution of sale deed but the appellants did not turn up. He always remained ready and willing to perform his part of the agreement. He served legal notice on 31.1.2012 but the appellants neither executed the sale deed nor returned the earnest money. Hence the suit.

Defendants No. 1(a), (b) and (e) filed written statement raising usual preliminary objections viz. locus standi, cause of action, maintainability etc. On merits, they have denied execution of agreement of sale by Sh. Pyare Lal, receipt of earnest money of Rs. 6,00,000/- or liability of Pyare Lal or his successors in interest to execute sale deed in favour of the respondent-plaintiff. They raised additional plea that property in dispute is ancestral coparcenary property and Pyare Lal was limited owner for the purpose of management thereof. Pyare Lal had no legal necessity to sell the property in dispute. All other material averments were denied.

The trial court framed issues, reproduced in para 5 of the judgment of said court. Having heard counsel for the parties in the light of materials on record, trial court accepted plea of the respondent that Pyare Lal executed the agreement in question and respondent is entitle to relief of specific performance thereof. As has been noticed hereinbefore, Appellate Court affirmed findings of the trial court without variance.

Counsel for the appellants would argue that Pyare Lal was approximately 75 years old when the agreement was purportedly executed

by him. Before arrival of target date, he passed away on 9.9.2011. It is argued with vehemence that in the aforesaid background, the courts should not have allowed specific performance of agreement to sell and, at best, could allow alternative relief of recovery.

Counsel has sought to assail correctness of the agreement by referring to contradictions in the statements of material witnesses namely Attar Singh PW1, Suraj Bhan PW2 attesting witnesses of the agreement and Udai Ram respondent-plaintiff PW5. According to counsel, Attar Singh stated that agreement was executed at 1/2 p.m., Suraj Bhan stated that it was executed at 10/11 a.m. but Udai Ram stated that it was executed at 12/1 O' Clock. It is further argued that Attar Singh had also stated that Pyare Lal wanted to mortgage the land. Suraj Bhan PW2 had deposed that the agreement was got registered but it is not so. He further deposed that agreement was hand written as against the agreement being actually typed. Suraj Bhan also admitted that he is brother of Udai Ram from brotherhood. In addition, it is argued that appellants examined a witness from the office of Collector to prove that in April 2011, Collector's rate of land measuring 1 acre was fixed at Rs. 30 lakh, therefore, there was no possibility of deceased having agreed to sell his one acre for inadequate consideration of Rs. 9,00,000/- when otherwise, there is nothing on record suggestive of the fact that he was under any stress to make a distress sale. The last submission made by counsel is that as the Appellate Court has not recorded any finding in respect of agreement to sell, therefore, judgment passed by the Appellate Court may be set aside and the matter be remitted to the Appellate Court for decision of the appeal afresh.

I have heard counsel for the appellants, perused the paper book and records.

Be that as it may, the respondent-plaintiff examined both the attesting witnesses of the agreement in addition to his examination as a witness. Counsel has tried to assail the agreement by pointing out aforesaid contradictions/discrepancies in testimonies of the witnesses. Perusal of testimonies of the witnesses would reveal that all of them have corroborated each other that agreement was executed in the morning hours till lunch time. It is difficult to accept that witnesses who had come to depose in the court after about three years in respect of a transaction, they would be exact with regard to time of preparation of a document unless the witnesses are highly tutored. As per the settled position in law, minor contradictions are bound to occur in statements of truthful witnesses particularly when there is time lag between the transaction and their examination in the court. In this view of the matter, appellants can not derive any advantage to their contention from the aforesaid contradictions.

Attar Singh, at one stage, had stated that Pyare Lal called him as he wanted to mortgage his land. Firstly, there is no plea raised by the appellants that Pyare Lal wanted to mortgage his land but on that pretext agreement to sell has been got executed from him. Secondly, statement of a witness is to be read as a whole. If the statement of a witness is read by picking up sentences from here and there divorced from remaining part of testimony, it would lead to miscarriage of justice. I have gone through cross examination of Attar Singh in extenso and find that he is emphatic and assertive that agreement executed by Pyare Lal was for sale of land. In the

given circumstances, contention raised by counsel in this regard does not carry weight. Suraj Bhan, though had stated that agreement was got registered but in the same breath, he has deposed that he did not go to the office of Sub Registrar. The discrepancy that the agreement was hand written as against agreement being typed is of no consequence. This apart, there is hardly any rebuttal to evidence adduced by the respondent/plaintiff as Pyare Lal was the best person to say something about the agreement but he passed away even before arrival of target date.

The appellants have raised a plea that the suit land was ancestral coparcenary property and Pyare Lal had no legal necessity to sell the same. They have failed to substantiate their plea in this regard. Another plea with regard to inadequacy of sale consideration has been raised. Inadequacy of consideration *ipso facto* is not a ground to set aside an agreement or sale deed unless accompanied by some other circumstances creating doubt qua genuineness of transaction. On the contrary, it has been proved that in the year 2005, Pyare Lal sold his land, measuring 11 kanal 10 marlas, vide sale deed Ex. PW3/A, at sale consideration of Rs. 8,62,500/-. The witness examined by the appellants in respect of Collector's rate had deposed about Collector's rate fixed in April 2011 but did not state as to what was the Collector's rate at the time of agreement. In view of the above, the aforesaid contention also does not carry weight.

This brings to contention of the appellants that the Appellate Court has not recorded specific findings in respect of agreement to sell. Perusal of judgment of Appellate Court reveals that it does not make reference to any arguments raised by counsel for the appellants before the

said court to assail correctness of the agreement to sell. On the other hand, the court has noticed that counsel for the appellants therein assailed the decree passed by the trial court primarily on the ground that suit land was ancestral coparcenary property in the hands of Sh. Pyare Lal and market value of the property was not less than Rs. 40,00,000/-. Both these contentions were adverted to by the Appellate Court and rejected. If the appellants did not raise an issue regarding correctness of the agreement to sell on any other score whatever, there was no reason for the Appellate Court to record its separate findings in respect of agreement particularly that the Appellate Court has concurred with findings of the trial court in respect thereof. For this purpose, reference can be made to judgment of Hon'ble the Supreme Court **Girijanandini Devi and others vs. Bijendra Narin Choudhary AIR 1967 (SC) 1124.**

This apart, this court has dealt in detail contentions of the appellants to assail the agreement to sell but has expressed its inability to accept the same. Analyzed from any angle, I do not find an error much less perversity in consistent findings recorded by the courts, warranting intervention.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

9.1.2020
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Whether speaking/reasoned: Yes
Whether reportable : Yes/No