IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA-1038-2021(O&M)
Date of Order: 03.12.2021

KAMLA DEVI AND ANOTHER ..Appellants

Versus

KAMLA RANI AND ANOTHER ..Respondents

2. CR-2884-2021(O&M)

KAMLA DEVI ..Petitioner

Versus

SALIM ..Respondent

3. CR-2886-2021(O&M)

KAMLA DEVI ..Petitioner

Versus

KAMLA RANI AND ANOTHER ..Respondents

CORAM: HON'BLE MR. JUSTICE ANILKSHETARPAL

Present: Mr. Ravinder Singh Randhawa, Advocate
for the appellants/petitioners.

ANIL KSHETARPAL, J.

This judgment shall dispose of RSA-1038-2021, CR-2884-2021 and CR-2886-2021, respectively. The Regular Second Appeal and the Revision Petitions are connected and the learned counsel representing the appellant/petitioner is also common.

At the outset, it is important to acknowledge that the First Appellate Court has written a comprehensive and exhaustive judgment while reversing the judgment and decree passed by the trial Court. This Court appreciates the efforts put in by the Presiding Judge.

On the one side, there is might of a police official (appellant

No.2), whereas, on the other side, there are two gullible ladies (respondents) who do not appear to be much educated. The police official (appellant no.2) has got registered a sale deed from the respondents by practicing deception and misrepresentation upon them. The aforesaid two ladies (who are plaintiffs in the trial Court) have filed a suit for declaration, possession and permanent injunction claiming that the sale deed dated 24.03.2006, is illegal, ineffective, null and void, being a result of fraud and therefore, does not effect their legal rights in the suit property. In fact, the plaintiffs were required to file a suit for annulment of the sale deed, however, it is a mere irregularity of technical nature which should be ignored. Hence, the Court proceeds to do substantive justice which is the primary responsibility of the Courts.

Some facts are required to be noticed.

The plaintiffs (respondents herein) filed the suit on 15.03.2011, claiming that they have been deceived by misrepresentation as to the nature of the document which resulted in the execution of the sale deed. In fact, it is claimed that they were always under an impression that they are executing a mortgage deed which, in reality, unknown to the plaintiffs, was a sale deed. It has come on record that late Sh. Girdhari Lal was the owner of the property. He died and the property was inherited by his Class-I heirs namely Smt. Kamla Rani (widow), Smt. Geeta Rani (daughter) and Sh. Sunil Kumar (son). The plaintiffs have produced copy of mutation dated 30.01.2001, Ex.P3. All the aforementioned legal heirs mortgaged the suit property in favour of Panchkula Urban Cooperative Bank Ltd. vide mortgage deed (Ex.P-1) dated 20.07.2001. The legal heirs had borrowed a sum of

Rs.2,00,000/- from the Bank for the purpose of construction of the house. It has also come on record that Sunil Kumar paid certain instalments but thereafter, he started residing separately from the family by moving to another place, leaving behind his mother and sister, to discharge the remaining debt, by themselves. The aforesaid two ladies could not repay the instalments and therefore, the bank started proceedings for recovery of the amount. Sh. Jitender Grover, Accountant of the Bank, appeared as witness and stated that the plaintiffs committed a default in repayment and consequential proceedings for recovery were initiated. It is the case of the plaintiffs that in order to tide over the financial difficulty, they came in contact with Harmesh Lal-appellant No.2, a police official, who was, at the relevant time, working as Assistant Sub-Inspector. The plaintiffs further claimed that they borrowed a sum of Rs.2,88,000/- and as security for the repayment of the amount, they executed a mortgage deed in favour of Kamla Devi, wife of Sh. Harmesh Lal. In order to avoid any confusion, it is noted here that plaintiff No.1 is Kamla Rani widow of late Sh. Girdhari Lal, whereas, defendant No.1 is Kamla Devi wife of Sh. Harmesh Lal (defendant No.2).

The plaintiffs claimed that the aforesaid sale deed was executed by fraud and misrepresentation as the defendants always pretended that the plaintiffs are executing a document in the nature of a mortgage deed to secure repayment of the loan amount of Rs.2,88,000/-. At the time of execution of the mortgage deed, the possession of the first floor of the premises was also handed over to the defendants, whereas, the plaintiffs i.e. the aforesaid two ladies continued to reside on the ground floor of the premises. It was only in the year 2011, when the defendants filed a petition for ejectment of the plaintiffs (Smt. Kamla Rani and Geeta Rani, widow and daughter of late Sh. Girdhari Lal, respectively), claiming them to be tenants in the suit property, that the plaintiffs came to know of the fraud played upon them. They immediately, after getting a certified copy of the sale deed, filed the present suit on 15.03.2011. The appellants (defendants before the trial Court) denied the alleged fraud and claimed that the sale deed was executed by the plaintiffs voluntarily and therefore, prayed that the suit is liable to be dismissed.

As already noticed, the trial Court dismissed the suit, whereas, the learned First Appellate Court has reversed the judgment and decree of the trial Court. The appeal was listed for preliminary hearing on 29.10.2021, and the lower Court record was requisitioned.

Heard the learned counsel representing the appellants and with his able assistance perused the paper book as well as the record of the Courts below which was requisitioned.

The learned counsel while referring to document Mark-A, has contended that the loan was only in the name of Sunil Kumar and therefore, the Court while misreading the evidence has drawn a wrong inference. He further submitted that Jitender Grover, the Accountant in the Panchkula Urban Cooperative Bank, has not stated that the amount of Rs.2,88,000/-, the default amount of loan, was paid on 24.03.2006. He further submits that the First Appellate Court has erred in drawing an adverse inference against the defendants on the ground that Smt. Kamla Rani, widow of late Sh. Girdhari Lal, did not sign the copy of the sale deed which was retained in the

Office of the Sub-Registrar. He, while the drawing the attention of the Court to the photographs of Smt. Kamla Rani widow of late Sh. Girdhari Lal on the reverse side of last page of the sale deed, submits that her presence in the office of the Registrar on 24.03.2006, is not disputed.

As regards the first argument, it may be noted that Ex.P1 is a mortgage deed dated 20.07.2001. On a careful reading thereof, it is evident that the amount was borrowed from the Bank and the mortgage deed was executed by three individuals namely Smt. Kamla Rani (widow), Geeta Rani (daughter) and Sunil Kumar (son) of late Sh. Girdhari Lal. Therefore, a receipt issued by the Bank, only in favour of Sh. Sunil Kumar, to prove that some amount has been repaid does not advance the case of the appellants. Sh. Jitender Grover has categorically stated that the aforesaid three persons had borrowed Rs.2,00,000/- from the Bank. Hence, there is no substance in the first argument of the learned counsel representing the appellants.

The next argument of the learned counsel representing the appellants is with reference to the statement of Sh. Jitender Grover, a bank official. On a careful reading of his examination-in-chief, it is evident that the aforesaid two ladies had returned the amount of Rs.2,88,000/- (the defaulted amount) on 24.03.2006. In such circumstances, it is evident that there is no substance in the second argument of the learned counsel representing the appellants.

The next argument is with regard to the effect of absence of signatures of Smt. Kamla Rani (widow of late Sh. Girdhari Lal) on the copy of the sale deed retained in the Office of the Sub-Registrar. On a careful examination of the record, it is evident that the two copies of the sale deed dated 24.03.2006, have been produced as Ex. P2 and D1. Ex.P2 is a certified copy issued by the Office of the Sub-Registrar on 14.03.2011. It is evident that the signatures of Smt. Geeta Rani (daughter of late Sh. Girdhari Lal), one of the vendors, only exist on the copy of the sale deed. In other words, one of the vendors i.e. Smt. Kamla Rani (widow of late Sh. Girdhari Lal) has not signed the copy of the sale deed retained in the office of the Sub-Registrar. She has also not signed on the endorsement before the Sub-Registrar, at the time of the registration of the sale deed. It is significant to note that the alleged sale deed is alleged to have been executed by Smt. Kamla Rani (widow of late Sh. Girdhari Lal) and Smt. Geeta Rani (daughter of late Sh. Girdhari Lal). No doubt, on the reverse side of page No.4 of the sale deed, there is a photograph of Smt. Kamla Rani, Geeta Rani and the witnesses, along with the signatures of Smt. Kamla Rani. Now, the Court proceeds to examine Ex.D1, which is an attested copy of the sale deed issued by the Court which has been proved by examining a Court official. The appellants-defendants had produced the original sale deed before the Court of Rent Controller. Therefore, they examined the Court official who brought the original record and proved the copy of the sale deed Ex.D1. On a careful perusal thereof, it is evident that Smt. Kamla Rani as well as Smt. Geeta Rani have signed on each page of the sale deed which runs into 10 pages. However, Smt. Kamla Devi has not signed when the sale deed was presented before the Sub-Registrar. It is only Smt. Geeta Rani who has signed on the alleged document in the presence of the Sub-Registrar. Therefore, it is evident that Smt. Kamla Rani (widow of late Sh. Girdhari Lal), one of the vendors, did not appear before the Sub-Registrar as her signatures are missing, at the time, when the sale deed was registered. It is also evident that the column with respect to the time as to when the sale deed was registered has been left blank by the Office of the Sub-Registrar. It is the case of the plaintiffs (respondents herein) that they were brought into the Complex where the office of Sub-Registrar is located at around 5:00 p.m. and were made to sign the document in a hurried manner, on the pretext that the office of the sub-Registrar is going to be closed soon. The signatures were obtained in the cabin of Sh. Sucha Singh, Advocate, who is alleged to have been scribed the document. From a reading of the evidence of Sh. Sucha Singh, it is evident that when Sh. Sucha Singh was put searching questions with regard to the time of the registration of the sale deed, he feigned ignorance. However, he did not deny that the sale deed was registered after the office hours and for the same reason, the column meant for specifying the time of registration of the sale deed was, intentionally, left blank. He further did not deny that the sale deed was signed at around 5:00 p.m. and it was presented in the office of the Sub-Registrar after 5:00 p.m. i.e. beyond the official working hours. It is also observed that he is not a regular scribe and therefore, he does not maintain any register/notebook to keep a record of the documents scribed by him. He has admitted that he did not accompany the parties to the office of the Sub-Registrar. Subsequently, he claims loss of memory as regards the time when the parties signed the documents, however, he admits that it was signed in his cabin/seat. He further states that no payment of the amount of consideration was made in his presence. However, he states that the parties admitted the receipt of the amount of consideration.

Furthermore, the statement of Harmesh Lal (appellant No.2), makes an interesting reading. He has deposed that Charanjeet Singh Channi who works in his Department, had introduced him to the plaintiffs. He admits that he did not verify if the title of the vendors was subject to any encumbrance before getting the sale deed executed. When he was grilled in the cross-examination, he admitted that he is posted in Panchkula as a Security Officer, at the residence of a Police Officer. He states that he paid Rs.5,80,000/- in cash, to the plaintiffs at about 12:00-12:30 p.m. on 24.03.2006. He claims that he has borrowed a sum of Rs.50,000/- from his brother Janak Raj, whereas, he has withdrawn Rs.50,000/- from the Cooperative Bank, Mohali. On further cross-examination, he admitted that he had met the plaintiffs, for the first time, 5-6 months before the registration of the sale deed and that there was a previous agreement to sell, however, he states that he does not remember when the agreement to sell was executed, though he claims that he had already paid Rs.1,50,000/- while entering in the agreement to sell in January, 2006, however, he has failed to produce the copy of the alleged agreement to sell or any evidence as regards the alleged part payment. He also admits that there is no reference to the agreement to sell in the sale deed. On further grilling, he admits that he was having Rs.50,000/- with him, whereas, he borrowed a sum of Rs.50,000/- from his brother Janak Raj and the remaining Rs.50,000/- from one for Krishan Lal in order to pay the earnest money i.e Rs.1,50,000/-. He further claims that he, again, borrowed a sum of Rs.50,000/- from his brother Janak Raj. He admits that he has not mentioned the aforesaid details in his Income Tax Return. Subsequently, he contradicted his previous statement and claims that he has paid the entire amount of Rs.5,80,000/- from his personal savings. He further claims that before getting the sale deed registered, he did not get the documents of the suit property verified. In the written statement, the defendants pleaded ignorance of the encumbrance in favour of the bank. However, during his cross-examination, he states that at the time of registration, he verified the aforesaid documents when the plaintiffs brought the Jamabandi for the year 2002-2003. He admits that he saw the entry of loan in favour of the bank in the jamabandi but he did not satisfy himself as regards an entry of repayment of the loan. He explains that since No Objection Certificate was issued, therefore, he did not take this trouble. He has further stated that he does not remember as to whether he ever visited the Patwari of the area to examine the record or not. Most importantly, he admitted that the disputed house is owned by three persons, whereas, he has got the sale deed executed and registered from Smt. Kamla Rani and Smt. Geeta Rani, only. He has, afterwards, taken a stand that Sunil Kumar continues to be the owner of his share. On further cross-examination, he has stated that he used to withdraw the amount from his salary account from the last three years and keep the cash amount in his house. Further, he has deposed that the agreement to sell was executed on 10.01.2006, however, its copy has not been produced. He has admitted that he did not examine the revenue record before entering into the agreement to sell. He has admitted that Smt. Kamla Rani and Geeta Rani continue to stay in the portion of the house where they had been previously residing even after the sale deed was executed. However, he has stated that the plaintiffs (ladies) requested him to allow them to reside in the house and promised to pay rent for the same as they had no other roof over their head.

Furthermore, the evidence of Smt. Kamla Devi (wife of Sh. Harmesh Lal) is, again, fascinating to read. In her cross-examination, she has stated that she does not remember whether there was any agreement to sell or not. She has further stated that she does not remember whether the payment was made to the plaintiffs before registration of the sale deed or afterwards. She has stated that she signed the sale deed and went home, not although, she had no particular work to do. In other words, she did wait to get the alleged sale deed registered. Subsequently, she states that the plaintiffs were paid, on the date of registration, in her presence but she does not remember the mode of payment. She has further admitted that she has never seen any document in the nature of an agreement to sell.

Further Sh. Surjit Singh is a witness to sale deed. He is known to Sh. Harmesh Lal as his brother-in-law works with Sh. Harmesh Lal. He has stated that he reached Kalka at 12:00-12:30 p.m. The registration took place in Kalka. He has stated that after his arrival, Sh. Harmesh Lal got the sale deed scribed within half an hour. It is observed from his statement that throughout the transaction as well as while appearing in the Court, he appears to be under the impression that Sardar Sucha Singh, Advocate, the scribe, is the Tehsildar. On two different occasions, he has stated that Sardar Sucha Singh is the Tehsildar. Subsequently, he states that he never appeared before the Tehsildar. While explaining, he states that he was standing outside the Registry Office and he began his return journey at around 04:00 p.m. He has also admitted that no payment was made in his presence.

It may be noted here that the sale is with respect to 3 bighas and

6 biswas. From a careful examination of the mutation, it is apparent that the total plot inherited by Smt. Kamla Rani (widow of late Sh. Girdhari Lal), Sh. Sunil Kumar and Smt. Geeta Rani, (son and daughter of late Sh. Girdhari Lal, respectively) is 3 bighas and 6 biswas only. Sh. Sunil Kumar is not alleged to have executed the sale deed. Therefore, this sale deed could be executed with respect to $2/3^{rd}$ share, only, and not with regard to the share of Sh. Sunil Kumar, as well.

On the basis of the aforesaid circumstances and evidence, the First Appellate Court has formed an opinion that the sale deed dated 24.03.2006, is a result of fraud/deception induced by intentional misrepresentation as to the nature of the document executed.

In the considered view of the Court, the opinion formed by the First Appellate Court does not suffer from any error. Hence, there is no ground to interfere in the same. Rather the same appears to be coherent and well-reasoned.

Hence, the appeal is dismissed.

Additionally, keeping in view the aforesaid evidence, it is evident that the signatures of Smt. Kamla Rani (widow of late Sh. Girdhari Lal) were not inadvertently left on a particular page or two. Rather, from a collective reading of the evidence of Smt. Geeta Rani, Sh. Harmesh Lal, Smt. Kamla Devi (wife of Sh. Harmesh Lal), Sh. Sucha Singh, Advocate and the witness of the margin Sh. Surjit Singh, it is evident that it was the result of intentional misrepresentation leading to fraudulent execution of the alleged sale deed. Before concluding, this Court is compelled to make certain observations which are required to be brought to the notice of the

State of Haryana. As per the Provisions of the Registration Act, 1908, the Registrar is deputed to register the documents by adding authenticity to them. One purpose of making the registration of certain documents compulsory is to ensure the veracity of their contents and to be able to draw a presumption of correctness regards them which provides some sanctity in law. However, it is evident that the office of the Sub-Registrar, in the present case, has, *prima facie,* failed to discharge the aforesaid responsibility. At the cost of repetition, it is stated that it is apparent from the perusal of the copy of the sale deed, kept at the office of the Sub-Registrar, that it does not bear the signatures of Smt. Kamla Rani (widow of late Sh. Girdhari Lal), who is one of the vendor, on any page of the sale deed. Moreover, even the original sale deed produced by the appellants also show that signatures of Smt. Kamla Rani (widow of late Sh. Girdhari Lal) do not exist, at the time, when the Sub-Registrar is alleged to have endorsed the sale deed in order to prove its registration. Even the column with respect to the time of registration of the sale deed is left blank. Furthermore, the photograph of the Sub-Registrar is also not present.

Keeping in view the aforesaid facts, let a copy of the judgment be forward to the learned Chief Secretary, Haryana, to look into the matter and take remedial steps.

In CR-2886-2021, the appellant No.1 also impugns the order passed by the Appellate Authority dated 12.11.2021. The District Judge has refused to grant adjournment on account of pendency of the Regular Second Appeal. In the considered view of the Court, the opinion of the Appellate Authority does not suffer from any error.

In CR-2884-2021, the Appellate Authority has dismissed the application under Section 10 of the Code of Civil Procedure, 1908, to stay the proceedings in the appeal arising from the order of ejectment passed by the Rent Controller.

In the considered view of the Court, once the Regular Second Appeal is being decided, then, the proceedings cannot be stayed because the only ground for stay of proceedings is the pendency of the Regular Second Appeal, which now stands decided.

Consequently, the Regular Second Appeal as well as both the Civil Revisions are dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

03rd December, 2021 **(ANIL KSHETARPAL)**
Ay **JUDGE**

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