

**109 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-5095-2018(O&M)

Date of decision:09.04.2021

Uma Devi

.....Appellant

Versus

Shiv Dyal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Harkesh Manuja, Advocate for the appellant

ANIL KSHETARPAL, J. (ORAL)

The parties are being referred to as per their status in the suit.

The plaintiff-appellant is in Regular Second Appeal against the concurrent findings of fact arrived at by the courts below while dismissing her suit for declaration to the effect that the alleged mutation entered and sanctioned by the revenue authorities in favour of defendant no.2 on the basis of an alleged sale deed is null and void. The plaintiff and defendant no.3 (since deceased) were husband and wife. The plaintiff claims that defendant no.3 deserted her at the instance of his brother. The plaintiff claims to be the owner in possession of the property in dispute which she is alleged to be purchased by her with the help of her parents and claims that defendant no.3, her estranged husband (since deceased), had no right to enter into an agreement to sell the property. She claims that defendant no.3 was a drunkard and used to

spend all his earnings on the vices. During the pendency of the suit, defendant no.3 died and his legal heirs were brought on record. Defendant no. 1 and 2 contested the suit. It was pleaded that defendant no.3 being owner of the property agreed to sell it in their favour and thereafter, executed a general power of attorney in favour of defendant no.1, who in turn executed a sale deed on 18.10.2020 the property in favour of defendant no.2.

The plaintiff did not produce any document of title in her favour. Nirmal Kaur appeared as PW4 and admitted that by virtue of the sale deed, defendant no.2 was the owner of the property. It has also come on record that the plaintiff had put her thumb impression on the agreement to sell executed by defendant no.3 in favour of defendant no.1 and 2.

Keeping in view the aforesaid facts, both the courts have dismissed the suit.

This Bench has heard learned counsel for the appellant at length and with his able assistance perused the paper book. Learned counsel for the appellant submits that an application for de-exhibiting the sale deed in favour of defendant no.2 was filed but never decided. He further submits that as per the agreement to sell, total sale consideration of Rs.3,00,000/- was fixed whereas the sale deed is showing total sale consideration of Rs.4,96,500/-. He further submits that under the agreement to sell, no possession was delivered and therefore, the defendants cannot claim to be in possession.

At the cost of repetition, it is important to note that the plaintiff filed this suit on the basis of title, however, she has produced no document to prove that. It is her specific case that the property was purchased by her with the funds provided by her parents. Even PW4 who appeared for the plaintiff has admitted that the sale deed is in the name of defendant no.3. The correctness of these findings are not assailed.

As regards the application for de-exhibiting the documents, it may be noticed that there is no provision for de-exhibiting any document. With regard to difference in the amount of consideration, it may be noted that the alleged agreement to sell was executed by defendant no.3 in favour of defendant no.1 i.e Shiv Dyal on 25.06.2009. Thereafter, defendant no.3 executed a general power of attorney in favour of Shiv Dyal on 27.09.2010. Thereafter, Shiv Dyal executed the sale deed of the property in favour of his own wife vide a sale deed dated 18.10.2010. Hence, variation in the sale consideration in the facts of the case would not be of significance. Defendant no.3 has never disputed the correctness of the sale deed during his lifetime.

Last argument of the learned counsel for the appellant is that there is no recital with regard to possession in the agreement to sell. It may be noted here that defendants are the owners. The plaintiff has filed a suit claiming to be the owner in possession. She has failed to prove her possession.

Keeping in view the aforesaid facts, this Bench does not

find it appropriate to interfere.

Hence, dismissed.

09.04.2021

rekha

Whether speaking/reasoned

Whether Reportable

Yes /No

Yes / No

(ANIL KSHETARPAL)
JUDGE