IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

219 RSA-5821-2018 (O&M)

Date of decision: 02.09.2021

VIDYA DEVI AND OTHERS ..Appellants

Versus

PRITAM SINGH ..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present- Mr. CB Goel, Advocate for the appellants.

Mr. Ashok Gupta, Advocate for the respondent.

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ANIL KSHETARPAL, J (Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

The defendants assail the correctness of the judgment passed by the First Appellate Court while ordering the refund of the earnest money along with the interest @ 6% per annum while denying the relief of possession by way of specific performance of the agreement to sell.

The plaintiff-Pritam Singh (respondent) filed a suit for possession by way of specific performance of the agreement to sell dated 13.06.2011 executed by late Sh. Soran Singh, predecessor in interest of the defendants. The defendants contested the suit on the ground that the property was the ancestral Hindu coparcenary property and the defendants have no knowledge about the execution of the agreement to sell.

Leaned Trial Court dismissed the suit whereas the learned First

Appellate Court on re-appreciation of evidence granted alternative relief to the plaintiff while ordering the refund of the earnest money along with the interest at 6% per annum.

The learned counsel representing the parties have been heard at length and with their able assistance. This Bench has perused the judgments passed by the subordinate Courts in addition to the record of the trial Court which was requisitioned.

Learned counsel representing the appellants contends that the execution of the agreement to sell is doubtful as the corrections were made in the document, by covering the name of a certain individual with the ink eradicator fluid. He further submits that there are three different versions of the payment of the earnest money of Rs.9,00,000/-. He submits that in the agreement to sell, it has been recorded that an amount of Rs.9,00,000/- has been paid in cash as earnest money and possession of the property agreed to be sold has been delivered. While drawing attention of the Court to the statement of plaintiff, he submits that the plaintiff has stated that there was another agreement to sell previously made before the execution of the present agreement to sell (Ex.P1). In the abovestated previous agreement to sell, Rs.6,00,000/- was paid as earnest money whereas Rs.3,00,000/- was paid at the time of execution of the agreement to sell. He further draws attention of the Court to the statement of DW2 Mai Chand, scribe who has stated that previous agreement to sell is registered in his notebook at entry No.1065 dated 02.09.2010 according to which Rs.6,82,500/- was paid as earnest money. Hence, learned counsel contends that the First Appellate Court has erred in ordering the refund of the earnest money.

Per contra, the learned counsel representing the plaintiff has submitted that there is a written contract between the parties proving the payment and receipt of Rs.9,00,000/-. Late Soran Singh has not only thumb marked the agreement to sell but has also thumb marked on the revenue stamp in token of receipt of the amount. He further submits that the plaintiff while appearing in evidence has admitted the previous agreement to sell and stated that on cancellation of the previous agreement to sell, the agreement to sell (Ex.P1) was executed on 13.06.2011. He hence, submits that the appeal is liable to be dismissed.

After having heard learned counsel for the parties, this Bench proceeds to adjudicate the dispute. It may be noted here that the defendants while filing the written statement have themselves pleaded that late Sh. Soran Singh was a man with vices and the plaintiff had obtained his thumb impression on blank paper. Furthermore, the defendants themselves have examined DW2 who has stated that late Soran Singh had executed a previous agreement to sell on 02.09.2010 on receipt of Rs.6,82,500/-. It has come in evidence that agreement to sell Ex.P1 was executed on 13.06.2011 after cancelling the previous agreement to sell. It has also come in evidence that the plaintiff has stated that apart from the payment made pursuant to previous agreement to sell dated 02.09.2010, further payment of Rs.3,00,000/- was paid.

On careful perusal of Ex.P1, the agreement to sell, it is apparent that it has been scribed on two different non-judicial stamp papers. On the first page Soran Singh has thumb marked the agreement to sell at two different places. One thumb impression is half on the revenue stamp which has been pasted whereas remaining half is on the stamp paper. There are signatures in the Urdu language in a similar manner. On the second page, there is no correction or interpolation and Soran Singh has not only put his thumb impression but also has signed in the Urdu language. No doubt, there is a use of ink eradicator fluid on the first page. However, such interpolation rendered meaningless/insignificant on the careful examination of page No.2. Moreover, the execution of the agreement to sell has been proved by examining the scribe as well as Sh. Narender Kumar Chauhan, Advocate who had notarised the agreement to sell. Learned First Appellate Court on appreciation of evidence has recorded a finding of fact. Furthermore, even if it is assumed that Soran Singh received a sum of Rs.6,82,500/- on 02.09.2010 yet the decretal amount along with interest does not proportionate with the bank interest. In view thereof, no ground to interfere in the impugned order is made out.

Dismissed.

All the pending miscellaneous application(s), if any, are also disposed of.

02.09.2021 **(ANIL KSHETARPAL)**

ashok **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No