

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**RSA-2016-2022 (O&M)
Date of decision: 28.09.2022**

Satya Devi and others

.....Appellants

Versus

Kuldeep Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Ramesh Sindhar, Advocate for the appellants.

MANJARI NEHRU KAUL, J. (ORAL)

CM-7012-C-2022

The application is allowed as prayed for as the deficiency in Court fee has already been made good.

CM-7011-C-2022

For the reasons mentioned in the application, the same is allowed and delay of 148 days in re-filing the appeal is condoned.

RSA-2016-2022 (O&M)

The respondent/plaintiff filed a suit for possession of residential house measuring 0K-3½ M, situated within abadi area of Village Shergarh, Tehsil and District Hoshiarpur (hereinafter referred to as 'the suit property') on the basis of an agreement to sell (Ex.P1) dated 03.09.2007 and in the alternative sought recovery of entire sale consideration i.e. Rs.3,60,000/- along with interest from the date of payment i.e. 03.09.2007 till its realization. The suit was decreed by the learned Trial Court vide judgment and decree dated 29.02.2016. The appeal preferred by the appellants/defendants No.1 to 3 and 5 against the aforesaid judgment and decree was dismissed by the Lower

Appellate Court vide order dated 17.08.2021. The appellants/defendants No.1 to 3 and 5 are now before this Court in Regular Second Appeal.

Parties to the *lis*, hereinafter shall be referred to by their original position in the suit.

The pleaded case of the plaintiff may be noticed as thus. Defendants were owners of the suit property. Defendant No.1 entered into an agreement to sell the suit property on behalf of defendant No.4. Plaintiff paid the entire sale consideration of Rs.3,60,000/- at the time of agreement to sell in the presence of marginal witnesses. Recital regarding delivery of possession was made in the agreement to sell, however, due to the joint nature of the suit property, possession could not be delivered. Plaintiff served a legal notice dated 14.03.2009 on the defendants for the execution and registration of the sale deed, however, the same was not heeded to by the defendants. Since the plaintiff was ready and willing to perform his part of the agreement, hence, on 01.04.2009 i.e. the date fixed for execution of the sale deed, he went to the office of the Sub Registrar, Hoshiarpur for the execution of the sale deed and waited for the defendants. The plaintiff even got his presence marked before the Sub Registrar, Hoshiarpur by way of an affidavit, however, the defendants did not turn up to perform their part of the contract. The plaintiff, having been left with no other option, filed the suit in question.

In the written statement, the defendants controverted the averments made in the plaint and pleaded that there was a loan transaction between Kulwinder Singh and defendant No.1-Satya Devi

in the sum of Rs.24,000/- which had been advanced to the latter on 26.08.2003. Thereafter, another transaction dated 27.01.2005 with respect to a loan of Rs.1,50,000/- took place between the wife of aforementioned Kulwinder Singh and defendant No.1. The defendants alleged that under the garb of the abovementioned transactions and a forged agreement between wife of Kulwinder Singh and defendant No.1 for sum of Rs.3 lakhs the agreement to sell (Ex.P1) had been manipulated and a fraud played upon them. It was also averred that since the defendants were shareholders to the extent of only 1/8th in the suit property and were not exclusive owners of the entire suit property, they could not have entered into the alleged agreement to sell (Ex.P1).

On the basis of the material on record and evidence led, the Courts below recorded concurrent findings and held that the plaintiff had been able to successfully prove the execution of agreement to sell (Ex.P1). The Courts also further observed that the allegations levelled by the defendants qua the agreement to sell being a result of forgery was meritless as no evidence was led by the defendants to prove the same. The Courts below, therefore, held that in the absence of any cogent evidence to rebut the validity of the agreement to sell (Ex.P1) it stood duly proved. The Courts further held that though the plaintiff had successfully proved the agreement to sell (Ex.P1), however, he had failed to prove the exclusive ownership of the defendants, and as such he was only entitled to the alternative relief i.e. recovery of Rs.3,60,000/- along with interest @ 6% per month from the date of payment i.e. 03.09.2007 till its realization.

Learned counsel appearing for the appellants/defendants

No.1 to 3 and 5 has vehemently argued that the decree and judgment of the Courts below suffered from patent illegality as no separate issue to determine the genuineness of the agreement to sell was framed even though the defendants had expressly challenged the same. He has further argued that when the defendants had questioned the very agreement to sell, on the basis of which the relief was claimed by the plaintiff, the Courts below could not have proceeded further without adjudicating on the said issue. He has also submitted that the Courts below erred in not putting the onus on the plaintiff to prove that the agreement to sell was not a result of forgery and instead placed the burden on the defendants to prove that the agreement to sell was forged.

I have heard learned counsel and perused the relevant material on record.

This Court does not find any force in the submissions made by the learned counsel appearing for the appellants/defendants No.1 to 3 and 5 that the findings of the Courts below suffer from patent illegality on account of no issue having been framed qua the genuineness of the agreement to sell. A perusal of the impugned judgment and decree reveals that the Courts below had placed the initial burden of proving the validity of the agreement to sell on the plaintiff and framed issue No.1 to this effect and only after considering all the material on record and the evidence led, discharged him of this onus and then held the agreement to sell to be duly proved.

Still further, the contention of the learned counsel that the onus was on the plaintiff to prove that the agreement to sell was not a result of forgery, deserved to be rejected outright. It is settled law that

the onus to prove fraud and forgery is on the person who alleges the same. Once the agreement to sell stood duly proved, the burden shifted on the defendants to prove their allegations of fraud and forgery, however, the defendants failed to lead any evidence to prove the alleged fraud and forgery.

On being pointedly asked, learned counsel for the appellants/defendants No.1 to 3 and 5 failed to bring to the notice of this Court anything on record to show that the conclusions arrived at by both the Courts below were either contrary to record or suffered from any material illegality.

As a sequel to the above, this Court thus does not find any error in the concurrent findings recorded by the Courts below. Accordingly, the instant appeal being devoid of any merit is dismissed.

28.09.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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