

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

125

RSA-524-2022 (O&M)
Date of decision: 18.08.2022

Surinder Kumari Sharma

.....Appellant

Versus

Sandeep Kumar and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Munish Gupta, Advocate for the appellant.

MANJARI NEHRU KAUL, J. (ORAL)

A suit for possession along with consequential relief of permanent injunction in respect of plot measuring 6 marlas out of khasra No.310(10-16), 311(0-8), 312(15-16), khata No.117/130, 118/131, 119/132 situated in village Sukhiabad, hadbast No.359, Tehsil and District Hoshiarpur (hereinafter referred to as 'the suit property') instituted by the plaintiff was dismissed by the trial Court vide order dated 18.03.2017. The appeal preferred to impugn the judgment and decree of the trial Court was also dismissed by the lower appellate Court on 21.10.2021. The plaintiff is now before this Court in Regular Second Appeal.

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

In brief the pleaded case of the plaintiff may be noticed as thus. Defendant No.1-Sandeep Kumar is the real brother of the plaintiff and owner of the suit property. Vide agreement to sell dated 15.06.2010 (Ex.P-2), he agreed to sell the suit property to the plaintiff for a sum of Rs.2 lakhs and received the entire sale consideration in the presence of

Hazara Singh at the time of execution of the agreement. As per the terms and conditions stipulated in the agreement to sell, defendant No.1 had undertaken to execute the sale deed in favour of the plaintiff as and when she desired. It was averred that defendant No.1 thus was legally bound to execute and register sale deed in favour of the plaintiff in terms of the agreement to sell as the entire sale consideration stood received by him. Defendant No.1 was served a legal notice on 05.04.2011 by the plaintiff and was called upon to intimate the date for the execution and registration of the sale deed so that the plaintiff could come present before the Tehsildar concerned along with necessary expenses for execution and registration of the sale deed. The plaintiff claimed that she had been always ready and willing to execute and register sale deed but defendant No.1 was not willing to perform his part of the contract even though he had been requested time and again to execute and register the sale deed in her favour.

In his written statement, defendant No.1 denied executing the alleged agreement to sell dated 15.06.2010 in favour of the plaintiff. It was also denied that he had ever received any payment of sale consideration qua the suit property. It was rather alleged that the agreement to sell dated 15.06.2010 was a forged and fabricated document. He further submitted that the suit property already stood sold to defendant No.2-Jamet Singh. Defendant No.1 also denied all other averments made in the plaint by the plaintiff.

In his written statement filed by defendant No.2, he claimed to be bonafide purchaser of the suit property for a valuable consideration. It was submitted that the suit property had been sold to

him by defendant No.1 vide registered sale deed dated 17.03.2011. Still further, it was submitted that the agreement to sell dated 15.06.2010 was on an unstamped paper and on the face of it there was a collusion between the plaintiff and Hazara Singh, the alleged attesting witness.

In the replication filed to the written statements, the plaintiff reiterated her averments made in the plaint and also pleaded that the sale deed if any executed by defendant No.1 in favour of defendant No.2 during the pendency of the suit was hit by the principle of *lis pendens*.

On the basis of material and evidence led, both the Courts recorded concurrent findings qua the sale deed dated 15.06.2010 being a suspicious document.

Learned counsel for the appellant/plaintiff *inter alia* has vehemently argued that both the Courts below failed to appreciate the evidence on record in the right perspective. It was submitted that the Courts below turned a blind eye to the fact that defendant No.1 while denying his signatures on the agreement to sell dated 15.06.2010 (Ex.P2) claimed that he used to sign only in English, however, it stood proved on record that in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the M.V. Act') titled as 'Rajiv Kumar and others Vs. Bhupinder Singh @ Bhinda and others' (Ex.PX) defendant No.1 had affixed his signatures in Punjabi and still further PW4 Amit Katoch had also proved on record the attested copy of the aforementioned claim petition under Section 166 of the M.V. Act. It was also argued that Hazara Singh, the lone attesting witness of the agreement to sell (Ex.P2) was not married to the plaintiff on 15.06.2010

but had married her 3 years later in the year 2013 and hence there was no question of any concealment of fact by the plaintiff with respect to her relationship with Hazara Singh or even any collusion between them. It was also argued that Hazara Singh was examined as PW1 and in his examination-in-chief, he deposed about the agreement to sell Ex.P2 as well as of the payment of the sale consideration by the plaintiff to defendant No.1. However, thereafter he expired and hence Hazara Singh could not be cross-examined.

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

Admittedly, the original agreement to sell dated 15.06.2010 (Ex.P2) was on an un-stamped paper though subsequently stamp duty was paid in compliance of the orders of the Court. However, the fact remains that when Ex.P2 was scribed, no stamp paper had been purchased. Had the agreement to sell been scribed on a stamp paper, not only the date when the stamp paper was purchased but also the purpose for which it was purchased would have come on record. Since there is absence of any evidence in respect thereof, it definitely creates a dent in the pleaded case of the plaintiff. Moreover, since the agreement to sell Ex.P2 is a typed document, the least that the plaintiff could have done in support of her case was to examine the deed writer/typist who had scribed the agreement to sell but strangely no one much less the deed writer was examined by the plaintiff. As per the plaintiff, the lone attesting witness Hazara Singh was a tenant in the house of her mother in the year 1990. In her cross-examination, she feigned ignorance about his complete address. However, DW6 Vijay Kumar, Customer

Assistant, State Bank of India, Main Branch, Hoshiarpur proved on record pension payment order Ex.DW6/A as per which the plaintiff was drawing family pension being wife of none other than Hazara Singh qua whose whereabouts and address as already observed earlier she had feigned ignorance. It would also be relevant to point out that affidavit Ex.DW6/B of the plaintiff and statement of all accounts regarding receipts of family pension Ex.DW6/C stood duly proved before the trial Court. It is thus evident that Hazara Singh was indeed the husband of the plaintiff and the latter had for reasons best known rather obvious, tried to conceal and keep it from the Court. It would also be pertinent to observe here that not only was the alleged agreement to sell Ex.P2 witnessed by only Hazara Singh but even the column for the signatures of the other witness was left blank. Admittedly, the plaintiff and defendant No.1 are brother and sister. It would be most pertinent to point out that it is a matter of record that there was a criminal litigation going on between the plaintiff and the defendant. The plaintiff had levelled allegations against her brother i.e. defendant No.1 in the criminal case filed by her that she had been turned out of the house on 20.07.2006 and that defendant No.1 had also committed theft of her gold jewellery. The accused including defendant No.1 were acquitted in the above complaint case vide judgment dated 20.11.2014 Ex.D2. The plaintiff filed an appeal against the judgment of acquittal which, however, was withdrawn by her vide order dated 15.12.2015 (Ex.DX5). In the circumstances, it does not appeal to reason and cannot be digested that defendant No.1 would have still agreed to sell the suit property in favour of the plaintiff vide agreement to sell dated

15.06.2010 i.e. during the pendency of the criminal case against defendant No.1. It is not even the case of the plaintiff that the matter was ever amicably settled or compromised between her and her brother i.e. defendant No.1, which led to her withdrawing the appeal against their acquittal.

In the above facts and circumstances, when seen in their totality, this Court concurs with the findings recorded by both the Courts below that the plaintiff has failed to prove her case for seeking possession of suit property by way of specific performance of agreement to sell dated 15.06.2010. No doubt, it was urged that Hazara Singh had married the plaintiff after the agreement to sell had been executed in the year 2013, however, this fact would have come to the rescue of the plaintiff only if the original agreement to sell dated 15.06.2010 had not been written on a plain paper but on a duly stamped paper because the records would have then reflected the specific date when the stamp paper was purchased and the purpose for which it was purchased. In the absence of the aforementioned, this Court has no hesitation in observing that the agreement to sell Ex.P2 does comes across as a suspicious document. The Courts below have not committed any error in holding that defendant No.2 is a bonafide purchaser of the suit property.

On being pointedly asked, learned counsel for the appellant/plaintiff 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.

In the circumstances, this Court does not find any error in the

concurrent findings recorded by both the Courts. The appeal being devoid of merit is accordingly dismissed.

18.08.2022

(MANJARI NEHRU KAUL)
JUDGE

Vinay

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No