

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

(102)

RSA-2205-2019 (O&M)

Date of Decision : February 17, 2023

Mukand Singh Through His LR Nirmal Singh

.. Appellant

Versus

Kavaljeet Kaur

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vinod Kumar Kataria, Advocate, for the appellant.

Mr. Chanakya Batta, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present Regular Second Appeal, the challenge is to the judgment and decree of the trial Court dated 01.03.2018 by which, the suit filed the respondent-plaintiff for specific performance of the agreement to sell dated 06.03.2009 has been allowed as well as the judgment and decree dated 28.03.2019 of the lower Appellate Court by which the appeal preferred by appellant-defendant has been dismissed.

The challenge to the judgments and decree of the Courts below is on the ground that there was no agreement to sell, which was entered by Mukand Singh-appellant (since died), hence, the execution of the same does not arise and the said agreement to sell in question has not been proved beyond shadow, hence, the judgment and decree of the trial Court holding that the respondent-plaintiff has been able to prove the execution of the

agreement and was ready to perform her part, has wrongly been allowed, hence, judgment and decree of the trial Court is liable to be set aside along with the judgment dated 01.03.2018 of the lower Appellate Court by which the appeal filed by the appellant/defendant has been dismissed vide order dated 28.03.2019.

On the basis of the evidence, which had come on record, the trial Court as well as the lower Appellate Court have recorded a finding that the agreement to sell dated 06.03.2009 has been proved.

Learned counsel for the appellant argues that the deed writer was not produced so as to ascertain the genuinity of the said agreement. Learned counsel for the appellant submits that the respondent-plaintiff Kawaljeet Kaur had never stepped into the witness box to present her case and only her father being the power of attorney appeared and recorded his statement, which statement could not have been taken into account to record the finding qua the readiness of the plaintiff to perform her part in the agreement to sell.

Learned counsel for the appellant further argues that in the present case as the plaintiff never stepped into the witness box, hence, any knowledge which the principle has, cannot be disposed by the attorney keeping in view the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.147-148 of 2001 titled as Man Kaur (Dead) by LRs vs. Hartar Singh Sangha, decided on 05.10.2010.***

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Once the appellant himself has conceded in his testimony that the money was received in terms of the agreement to sell in question as well

as signature on the said agreement were of his father, merely that the deed writer was not produced, will not hamper the concurrent findings recorded by the Courts below.

In respect of the argument of the learned counsel for the appellant that the respondent-plaintiff did not stepped into the witness box, is not also applicable to appellant for the reason that on the day of the execution, the power of attorney had appeared and got signed the register of the Tehsildar concerned showing the factum of readiness to execute. It cannot be said that once the power of attorney had appeared on behalf of the plaintiff before the authorities concerned to show the readiness and filed an affidavit, argument of the learned counsel that facts stated in the plaint were not to the knowledge of the attorney cannot be accepted. Facts in the present case are entirely different that in *Man Kaur's case (supra)*, hence, the law being relied by the learned counsel for the appellant in *Man Kaur's case (supra)* is not applicable in the facts and circumstances of the present case.

Learned counsel for the appellant has relied upon the the statement of prosecution witness No.1, who is stated to be the witness to the agreement to sell in question that there are discrepancies in his statement, which proves that the agreement dated 06.03.2009 was never signed by the father of the appellant, hence, the finding recorded by the trial Court qua the valid agreement to sell is not based upon the evidence which has come on record.

Though, it is a matter of fact that there are certain discrepancies in the statement of PW-1 but the Court is required to see all the evidence which has come on record to arrive at a conclusion. The appellant himself

appeared in the witness box after the death of Mukand Singh, who was the signatory to the agreement to sell in question and conceded certain facts such that on the date of agreement, his father had brought a sum of Rs.5 lacs at home. He has further conceded in his testimony that his father never raised any grievance that the said agreement was forged or he never signed the said agreement even after the suit was filed for specific performance. Further, the appellant has conceded in his testimony the fact that the signature on the agreement to sell in question belongs to his father-Mukand Singh. Once, all these facts have been conceded by the appellant himself in his testimony before the competent Court of law, minor discrepancies in the statement of attesting witness will not render the finding of the Courts below that a valid agreement to sell was proved by the plaintiff perverse in any manner.

The Courts below have appreciated all the evidence on record so as to record finding of facts. In the Regular Second Appeal, the said evidence cannot be re-appreciated to arrive at a different finding. The only question is whether, the sufficient evidence existed on record to record a particular finding or not. In the facts and circumstances of the present case, the admission of the appellant himself, which has been stated hereinbefore and were good enough to record the findings as recorded by the Courts below, have been conceded by the learned counsel for the appellant during the hearing itself. That being so, it cannot be said that the findings recorded by the Courts below qua the valid agreement to sell are perverse in any manner.

Further, the aspect of validity of the agreement to sell in question is to be seen on the basis of the fact that on an earlier occasion

also, Mukand Singh had sold land to the husband of the plaintiff. Once, the parties had already entered into an agreement for sell qua some portion of the land earlier raising an argument by the appellant that there was no occasion with the appellant-defendant Mukand Singh to enter into an agreement with the respondent-plaintiff, cannot be believed.

The parties were known to each other, hence, once the payment has been conceded by the appellant in pursuance to the agreement to sell in question and the signatures on the said agreement have also not been disputed to be that of Mukand Singh and it has also been conceded that the allegation of forged agreement to sell was never taken before any authority including the police, objection being raised to the findings recorded by the Courts below qua the valid executed agreement to sell cannot be entertained at this stage keeping in view the concurrent findings recorded by the Court below in view of the evidence already on record.

No other argument was raised.

Keeping in view the above, no ground is made out for any interference by this Court in the present appeal.

Dismissed.

CM-5908-C-2019

As the main Regular Second Appeal is dismissed, present application also stands dismissed.

February 17, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No