

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. ESA-23-2023 (O&M)
Reserved on: 14.11.2023
Date of decision: 20.11.2023

NARINDER SAINI

..Appellant

Versus

ISHWAR DASS MALIK (DECEASED) THROUGH
LRS AND ORS.

..Respondents

2. RSA-1157-2023 (O&M)

NARINDER SAINI

..Appellant

Versus

KAMLESH MALIK (DECEASED) THROUGH
LRS AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gaurav Dutta, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

1. Two connected appeals, one execution second appeal, whereas, another regular second appeal filed by the common appellant have come up for hearing.

2. In order to comprehend the issues involved in these cases, the relevant facts, in brief, are required to be noticed.

3. Smt. Soma Devi entered into an agreement to sell the suit property in favour of Sh. Ishwar Dass Malik on 02.11.1998, for a total sale consideration of Rs.6,00,000/-. Smt. Soma Devi received Rs.6,00,000/- as the earnest money, whereas, the balance sale consideration was to be paid on 12.01.2000, i.e. the date fixed for the execution and registration of the sale

deed. On 22.08.2000, Sh. Ishwar Dass Malik filed a suit for possession by way of specific performance of the agreement to sell. Smt. Soma Devi contested the suit while alleging that she is the owner of the property and she never entered into an agreement to sell with the plaintiff. She denied the receipt of Rs.6,00,000/-. After the suit was contested, the suit filed by Sh. Ishwar Dass Malik was decreed on 15.12.2008.

4. On the other hand, the appellant Sh. Narinder Saini claims that Smt. Soma Devi entered into an agreement to sell on 26.08.1997, in favour of Sh. Parveen Kumar Jain. Subsequently, on 23.07.1999, Smt. Soma Devi executed a supplementary agreement as well as a General Power of Attorney in favour of Sh. Parveen Kumar Jain. On the basis of the aforesaid General Power of Attorney, Sh. Parveen Kumar Jain executed two registered sale deeds on 23.12.1999 and 27.12.1999 in favour of Smt. Neeru Jain and Smt. Kamlawanti Jain. It is stated that Smt. Neeru Jain and Smt. Kamlawanti Jain sold the property vide registered sale deed dated 25.04.2003, in favour of the appellant Sh. Narinder Saini.

5. Sh. Narinder Saini, filed the objection petition in the execution petition and also filed an independent suit for grant of decree of declaration that the decree passed in favour of Sh. Ishwar Dass Malik is not binding on his rights as the agreement to sell in favour of Sh. Ishwar Dass Malik is forged and ante-dated and Smt. Soma Devi had in fact colluded with Sh. Ishwar Dass Malik. The Executing Court has dismissed the objection petition vide order dated 05.01.2016, which in appeal has been affirmed by the First Appellate Court on 15.02.2016. Similarly, the civil suit filed by the appellant was dismissed by the trial Court on 27.01.2017, which in appeal

has been affirmed by the First Appellate Court vide judgment and decree dated 22.03.2023. In the execution petition as well as in the civil suit, the appellant has failed to produce the original agreement to sell dated 26.08.1997, in favour of Sh. Parveen Kumar Jain. Although, the plaintiff has claimed that the agreement to sell has been lost, however, he failed to prove its loss. He has also failed to prove that he was ever in possession of the property. As per the finding of the First Appellate Court, in the regular second appeal, Sh. Vivek Saini, is stated to be one of the legal representatives of Smt. Soma Devi. It has come on record that Sh. Vivek Saini was in possession of the property and his conviction was sought by the appellant. The possession of the property has already been delivered to the decree holders namely the legal representatives of Sh. Ishwar Dass Malik.

6. The appellant has failed to produce the stamp vendor to prove that the agreement to sell dated 02.11.1998, was ante-dated or forged. The appellant has also not produced any evidence to prove that Smt. Soma Devi colluded with late Sh. Ishwar Dass Malik. In fact, in the ESA-23-2023, the judgment passed by the trial Court on 15.02.2008, has been produced as Annexure A-3. A careful perusal thereof clearly proves that Smt. Soma Devi contested the suit tooth and nail. She while defending the suit never claimed that the property has already been sold in favour of Smt. Neeru Jain and Smt. Kamlawanti Jain. She has also not stated that there was any agreement to sell executed on 26.08.1997. It has also not been proved that the objector ever came in possession of the property.

7. It may be noted here that the judgment and decree passed on 15.02.2008, have been affirmed in the first appeal as well as in the second appeal.

8. The learned counsel representing the appellant has submitted that the judgment and decree passed on 15.02.2008, are not binding on the appellant as he was not made a party. He submits that the decree for possession by way of specific performance in favour of Sh. Ishwar Dass Malik is a judgment in personam and therefore, it is not binding on the rights of the appellant.

9. This Court has considered the submissions of the learned counsel representing the appellant.

10. The appellant has failed to prove a prior agreement to sell executed in favour of Sh. Parveen Kumar Jain, his predecessor in interest. It has also come on record that Smt. Neeru Jain and Smt. Kamlawanti Jain after purchasing the property for a sale consideration of Rs.7,00,000/- executed the registered sale deed in favour of the appellant for a sum of Rs.4,00,000/- only. There is no evidence to prove that the possession of the property was ever delivered to the appellant. In fact, the collusion between the appellant and Sh. Vivek Saini, the legal representative of Smt. Soma Devi, is evident. The First Appellate Court has found as under:-

“However, said Vivek Saini is none else, but one of the legal heirs of Soma Rani, who was original owner of the property in question. Said document Ex.D1 i.e. ejectment petition filed by appellant/plaintiff Narinder Saini against Vivek Saini clearly shows that in fact, appellant/plaintiff never came in possession of property in question and possibility cannot be rules out that said ejectment petition was filed by appellant/plaintiff against Vivek Saini, jut to create evidence to prove his possession over the suit property as claimed by contesting

respondents/defendants. It would not be out of place to mention here that said ejectment petition was got dismissed in default by appellant/plaintiff on 24.09.2012 as is apparent from copy of said order placed on record as Ex.D1.”

11. The learned counsel representing the appellant has failed to address any argument to prove that the aforesaid finding is not correct.

12. The appellant has failed to prove the agreement to sell dated 26.08.1987. He has also failed to prove that the agreement to sell executed in favour of Sh. Ishwar Dass Malik on 02.11.1998 was ante-dated.

13. Keeping in view the aforesaid facts, the appellant was not required to be impleaded as a party because he admittedly purchased the property during the pendency of the suit for possession by way of specific performance of the agreement to sell.

14. With these observations, no ground to interfere is made out with the findings of the fact arrived at by the Courts below.

15. Dismissed accordingly.

16. All the pending miscellaneous applications, if any, are also disposed of.

November 20th, 2023

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**(ANIL KSHETARPAL)
JUDGE**

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