



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-120-2024 (O&M)
Date of decision : 04.11.2024

Gurkanwal Singh and another Appellants

versus

Sunil Kumar and another Respondents

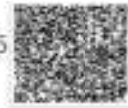
CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Vijay Lath, Advocate
for the appellants.

Mr. H.R. Bhardwaj, Advocate
for the caveator.

PANKAJ JAIN, J. (Oral)

1. Defendants are in appeal. For convenience, parties hereinafter are referred to by their original position in the suit i.e. the appellants as defendants and respondents as plaintiffs.
2. Plaintiff filed suit for possession by way of specific performance of agreement to sell dated 18.02.2011 executed by defendant No.1 in favour of plaintiff with respect to suit land measuring 1K-16M-3S. Plaintiff claimed that defendant No.1-Surinder Kaur expressed her intention to sell the suit land. An agreement was executed whereby she agreed to sell the same to the plaintiff @ Rs.35,000/- per marla. Earnest money of Rs.1 lakh was paid. Since she is resident of USA, she executed power of attorney in favour of defendant No.2, her brother, who executed sale deed in favour of plaintiff and left for USA. GPA was registered on 04.03.2011. Date for



execution of sale deed was agreed on or before 15.05.2012. Despite repeated request made by plaintiff, defendant No.1 and 2 repeatedly evaded execution of sale deed. Plaintiff discovered that defendant No.2 has executed sale deed qua the suit land in favour of his son (defendant No.3) on 11.03.2011 i.e. just 7 days after defendant No.1 executed GPA in his favour. Defendant No.2 sold land to defendant No.3 to his own son. The sale deed has been executed with an intent to defeat the rights of the plaintiff. The transaction is sham and the same is fraudulent. Defendant No.1 filed separate written statement admitting execution of the agreement to sell and receipt of earnest money. She stated that she executed power of attorney in favour of her brother i.e. defendant No.2 to facilitate execution of sale deed in favour of plaintiff on or before 15.5.2012. She also claimed that sale deed executed by defendant No.2 in favour of defendant No.3, was not binding on the rights of the plaintiff and defendant No.1. Defendant No.2 and 3 filed separate written statements. Relationship *inter se* between the defendants was admitted. Execution of agreement dated 28.02.2011 in favour of plaintiff by defendant No.1 was denied. It was claimed that the execution of power of attorney by defendant No.1 in favour of defendant No.2 was intended for transfer of property by defendant No.3 and not plaintiff.

3. On the basis of pleadings, suit filed by the plaintiff was put to trial framing following issues:-

“1. Whether the plaintiff is entitled to the relief of possession by way of specific performance of agreement to sell dated 28.02.2011 as prayed for? OPP

1-A Whether the plaintiff is entitled to relief of declaration



as prayed for? OPP

2. Whether the plaintiff is entitled to the alternative relief of recovery of ₹2,00,000/- along with interest as prayed for? OPP
3. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
4. Whether the suit is not maintainable in the present form? OPD
5. Relief.”

4. Trial Court decided issue No.1, 1A and 4 together holding that the execution of agreement to sell by defendant No.1 in favour of plaintiff was not denied and stood proved. Defendant No.2 and 3 failed to prove their defence with respect to agreement propounded by the plaintiff being antedated. Ownership of defendant No.1 was admitted by defendants No.2 and 3. Trial Court further held that power of attorney was executed by defendant No.3 in favour of Sukhwinder Singh. If the agreement to sell was antedated, how signatures of Surinder Kaur were obtained upon agreement to sell after 02.09.2011. It is admitted case that Surinder Kaur went abroad after execution of power of attorney Ex.DX. No evidence was led by defendant No.2 and 3 to prove that the agreement to sell was antedated as claimed. Had there been an intent on part of defendant No.1 to transfer her property in favour of defendant No.3-her nephew, she would have straightaway executed sale deed/transfer deed in his favour and there was no requirement to execute power of attorney in favour of defendant No.2. Admittedly, no consideration was paid by defendant No.2 to defendant No.1. Defendant No.1 admitted execution of agreement to sell in favour of plaintiff and receipt of earnest money. Plea of bonafide purchaser was also not available to defendant No.3 in the absence of



payment of consideration. Resultantly, Trial Court answered issues No.1, 1A and 4 in favour of the plaintiff holding him entitled to the decree of specific performance and held sale deed executed by defendant No.2 in favour of defendant No.3 to be null and void. In appeal, the aforesaid findings have been affirmed by the Lower Appellate Court.

5. Learned counsel for the appellant was unable to point out any piece of evidence that was ignored or misread by the Courts below. He does not dispute that execution of agreement to sell Ex.P-2 as propounded by the plaintiff stands admitted by defendant No.1-Surinder Kaur. The agreement to sell also stands proved by testimony of marginal witness Sukhwinder Singh, who appeared as PW-2. Defendant No.2-the mastermind behind whole of the gamut played by defendant No.2 and 3 opted not to appear in the witness box. Plaintiff specifically pleaded in his plaint with respect to his readiness and willingness to perform his part. The same was reiterated in his testimony.

6. In view of above, pure finding of facts have been recorded by the Court below after appreciating the entire evidence threadbare.

7. Supreme Court in the case of ***Randhir Kaur vs. Prithvi Pal Singh & Ors.*** 2019(17) SCC 71, while explaining the scope of second appeal under Section 41 of the Punjab Courts Act held as under:-

*“14. The Division Bench of Punjab and Haryana High Court in a judgment reported in **Sadhu v. Mst. Kishni**, 1980 AIR (Punjab) 85 set aside the judgment of the learned Single Bench in an intra court appeal in terms of the provisions of law as it existed prior to 1976, and held as under:*

“12. The scope of second appeal as envisaged by



section 100 of the Civil Procedure Code and section 41 of the Punjab Courts Act has been a matter of judicial scrutiny a number of times by this court as well as by the final court, that is, the Supreme Court of India. The learned counsel for the appellant has actually made a reference in this regard to **Detty Paitabhiramaswami v. S. Hanymayya** [AIR 1959 Supreme Court 57.], **Madamanchi Ramappa v. Muthaluru Bojjappa** [AIR 1963 Supreme Court 1633.], **Bithal Dass Khanna v. Hafiz Abdul Hai** [1969 S.C. Notes 481.] and **Afsar Shaikh v. Soleman Bibi** [(1976) 2 SCC 142 : AIR 1976 Supreme Court 163.]. These pronouncements; in a nutshell, lay down that there is no jurisdiction to entertain a second appeal on the ground of a erroneous finding of fact, however gross or inexcusable the error may seem to be. Nor does the fact that the finding of the first appellate Court is upon some documentary evidence make it any the less a finding of fact. A Judge of the High Court has, therefore, no jurisdiction to interfere in second appeal with the findings of fact given by the first appellate court based upon an appreciation of the relevant evidence. Their Lordships have further observed that the only ground on which such an appeal can be said to be competent is where there is an error in law or procedure and not merely on an error on a question of fact.

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14. In view of the above discussion, we are clearly of the view that the learned Single Judge exceeded his jurisdiction in setting aside the findings of the fact on issue No. 2. The provisions of section 100 being clear and unambiguous, there was no scope for interference with those findings. We thus allow the appeal and set aside the judgment of the learned Single Judge and affirm the judgment and decree passed by the District Judge. The parties are, however left to bear their own costs.

15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the

findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact.”

8. The said dictum was further elaborately echoed by three Judges Bench in **Satyender and Ors. Versus Saroj and Ors. 2022 AIR (Supreme Court) 4732** as under :-

“XXXX XXXX XXXX

17. Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a "question of law". In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court.....”

9. In view of above, finding no merits in the present appeal, the same is ordered to be dismissed.

10. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

04.11.2024
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No