

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

109

CR-3664-2014
Date of decision: 21.05.2024

MULKH RAJ MISHAL ..Petitioner

Versus

HARDIP KAUR ..Respondent

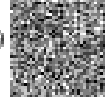
CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sumeet Mahajan, Sr. Advocate
with Ms. Rabani Attri, Advocate
Mr. Saksham Mahajan, Advocate
and Mr. Shrey Sachdeva, Advocate
for the petitioner.

Mr. B.B.S. Sobti, Advocate
for respondent (through video conferencing).

ANIL KSHETARPAL, J(Oral)

1. Through this revision petition, the plaintiff assails the correctness of the trial Court's order dated 11.04.2014.
2. After having heard the learned counsel representing the parties, this Court is of the view that the matter is required to be remitted back to the trial Court with a request to cull out the issues and permit the parties to lead evidence in support of their respective allegations and counter allegations. For this purpose, a brief narration of relevant facts is necessary.
3. The plaintiff (hereinafter referred to as petitioner) filed a suit for possession by way of specific performance of the agreement to sell, which was decreed ex parte on 28.07.2004. In the execution petition, the sale deed was executed by the Court in favour of the petitioner on 17.01.2006. An application for setting aside the ex parte judgment and decree passed on 28.07.2004 was filed by the respondent on 30.04.2007. The petitioner



appointed Sh. Balwinder Singh as his registered power of attorney on 05.07.2007. The plaintiff engaged Sh. Rajnish Garg, Advocate, to contest the petition filed for setting aside ex parte decree. Reply was filed to contest the application. The proceedings remained pending upto 2013. On 07.09.2013, Sh. Balwinder Singh changed his previous counsel and engaged Sh. Vikas Sharma, Advocate, on behalf of the petitioner. On 13.09.2013, Sh. Balwinder Singh suffered a statement to the effect that the ex parte judgment and decree be set aside, the sale deed executed in favour of the petitioner be annulled and the suit filed by the plaintiff for possession by way of specific performance be dismissed.

4. The Court on the basis of the aforesaid statement set aside the ex parte decree, which resulted in annulling the sale deed, however, the suit was not dismissed. At that stage, the petitioner filed an application claiming that Sh. Balwinder Singh has colluded with the respondent and played fraud with him and the power of attorney was revoked/cancelled on 01.11.2013.

5. The learned trial Court dismissed the application on the ground that Sh. Balwinder Singh was holding a registered power of attorney, which was valid on 13.09.2013, however, the Court permitted the petitioner to continue with the suit.

6. The correctness of order dated 11.04.2014, has been challenged.

7. The learned counsel representing the parties have been heard at length. They have addressed the arguments on merits of the case apart from procedural irregularity.

8. Keeping in view the nature of assertions made in the application filed by the petitioner, it was incumbent on the trial Court to settle the issues and permit the parties to lead evidence to prove their respective assertions.

The petitioner alleges fraud by her power of attorney in collusion with the respondent, which is denied by the respondent. In such circumstances, the Court was required to call upon the parties to lead their evidence particularly when not only an ex parte judgment and decree have been passed but even the sale deed was executed and registered in favour of the petitioner.

9. In view of the aforesaid position, this Court is not going into the detailed arguments addressed by the learned counsel representing the parties on the merits of the case. Hence, the order dated 11.04.2014, is set aside while remitting the matter back to the trial Court to settle the issues and call upon the parties to lead their evidence. It is expected that the trial Court will make sincere endeavor for expeditious disposal of the matter.

10. With these observations, the present petition is disposed of.

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

May 21st, 2024

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(ANIL KSHETARPAL)
JUDGE

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