



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1731-2013 (O&M)
Reserved on: 24.05.2024
Date of decision: 29.05.2024

Surinder Dhingra

....Appellant

Versus

Daya Chand and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rajender Pathak, Advocate for the appellant

Mr. Sunil Panwar, Advocate for respondent no.1 to 3

ANIL KSHETARPAL, J

1.Brief facts & introduction:-

1.1 In this Regular Second Appeal, the plaintiff assails the correctness of the concurrent findings of fact arrived at by the courts below while dismissing her suit for the grant of decree of permanent injunction restraining the defendants from interfering in her peaceful possession from Flat no.3323-C, Chanderlok, DLF, Phase IV, Gurugram. In the alternative, she also prayed for a decree of possession by way of mandatory injunction.

1.2 On the last date of hearing, the plaintiff filed an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') to produce photocopies of the Will dated 09.06.2006, affidavit of the same date as well as agreement to sell dated 20.09.2006. A copy of statement of Sh. Rakesh Kumar in preliminary evidence in a complaint case has also been produced.



1.3 In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

1.4 In substance, the plaintiff claims to be owner in possession of the aforesaid flat after purchasing it from Sh.Sanjeev Bhatnagar in the year 2004. She has claimed that she had taken a loan of Rs.1,50,000/- from defendant no.1 and Rs.2,00,000/- from defendant no.2, which has been repaid.

1.5 However, some blank papers were got signed by her, which the defendants have refused to return. Previously also, the plaintiff had taken loan and the defendants had fabricated the documents. She was forcibly dispossessed from the property. Hence, she lodged an FIR and also filed a writ petition in which directions were issued to the Assistant Registrar, Cooperative Societies to decide the dispute.

1.6 Defendants, while contesting the case, claimed that the plaintiff is neither an owner nor in possession and defendant no.3 is the owner in possession of the said flat.

1.7 The plaintiff herself has sold the flat to defendant no.3 on receipt of Rs.12,75,000/-. She has also resigned from the membership. Thereafter, she took the property, as a licensee, on payment of Rs.10,000/- per month, which she did not pay and ultimately, vacated the premises.

1.8 Upon appreciation of evidence, both the courts came to a conclusion that the plaintiff has received an amount of Rs.2,00,000/- on 10th April, 2006 and thereafter, Rs.4,00,000/- on 15.06.2006, through cheques.



1.9 She admits her signatures on the agreement to sell and the receipts. She had signed in the presence of her son Jaswinder and her son-in-law Sarabjit Singh, who have also signed. Thus, the courts dismissed the plaintiff's suit.

2. Arguments put forth by the learned counsel representing the parties

2.1 Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

2.2. On opportunity given, the learned counsel representing the appellant has filed a written note of his submissions which read as under:-

(i) The appellant is submitting that following documents which were very crucial to decide the alleged transfer of ownership of the above house of the appellant. These documents were not considered by the Hon'ble Courts below.

a.Exhibit: PW-5/50 Agreement dated 20.09.2006 between the Chanderlok Co-operative House Building Society and respondent no. 3/ Rajaram is forged.

b. Exhibit: PW-5/51 - Affidavit of appellant attested at Delhi is also forged.

c.Exhibit: PW- 5/44 - The will dated 09.06.2006 of the appellant is also forged.

(ii) The Ld. trial court and First Appellate court below did not appreciate the above said forgery which was committed by the respondents no.1, 2, 3 in connivance with others in order to forcibly and illegally transfer the above house of appellant. This contention of the appellant is prove by independent witness Sh. Rakesh Kaushal, Advocate and Notary Public in a connected criminal proceeding pertaining to illegal transfer of the house of appellant. The said witness had appeared in a criminal complaint case no. Comi 270/16. These above documents namely Exhibit: PW-5/50, Exhibit: PW-5/51, Exhibit: PW- 5/44, were not considered by both the courts below.



(iii) It is pertinent to mention here that the appellant had filed a FIR No.143 / 2010 with regard her illegal dispossession from the above house by the respondents and others. The police namely respondent no. 4 was fully connivance with other respondents to help in this illegal dispossession of appellant. It is only after the directions of Hon'ble Court the FIR No. 143 / 2010 was registered against the respondents no. 1, 3 and others by the respondent no. 4. Since respondent no. 4 was / is in connivance with these respondents, he even recommended before the concerned Ld. JMIC Gurugram to cancel this FIR No. 143/2010. The appellant filed protest application which was excepted and the same matter was registered as comi 270/ 16, which is still pending before Ld. trial court for consideration. In this criminal matter Sh. Rakesh Kaushal appeared as PW - 5 and stated that all the above three documents namely Exhibit: PW-5/50, Exhibit: PW-5/51, Exhibit: PW- 5/44, were not attested by him. He had deposed before Ld. JMIC Gurgaon on 23.09.2019. It is unfortunate that these documents were handed over to the previous counsel after Covid but same could not be placed by him till 22.05.2024. It is only the present counsel who is appearing as a counsel for the appellant before Ld. JMIC, Gurugram in comi 270 / 16 had moved CM 5749 - C - 2024 on 22.05.2024 alongwith these documents.

(iv) The appellant is uneducated and of about 74 years of age. She does not have sufficient means to spend on litigation of the above house But she was forced to do despite this handicap from last almost 15 years in District Court and before this Hon'ble Court. She was not informed by her previous counsel about the dismissal of her RSA. She was only told to pay the cost which was paid by her and later on dates were given by him. It is only at the last hour when this Hon'ble Court fixed this RSA for final agreement, he left the brief. The appellant had to bring her counsel from District Court, Gurugram/ present counsel on 21st May, 2024 to appear. This Hon'ble Court was pleased to give adjournment for today despite in convenience cause to Hon'ble Court in adjourning the matter.

(v) The appellant had filed one CM. No. 5749 - C - 2024 before this Hon'ble Court on 22.05.2024 in which all the above three documents Exhibit: PW-5/50, Exhibit: PW-5/51, Exhibit: PW- 5/44, are placed on record for kind consideration of this Hon'ble Court and for just and fair decision.

(vi) That Sh. Rakesh Kaushal, Advocate Notary who is practicing at Tis Hazari District Court Delhi since 07.01.1998 had clearly stated in his evidence in comi



270/16 that he never seen the appellant before today that is on 23.09.2019. He also stated that he had never attested documents Exhibit: PW-5/50, Exhibit: PW5/51, Exhibit: PW-5/44. He also stated that those days in the year 2006 in the state of Delhi, Rs. 5 adhesive stamp used to affixed on Notarized document but the respondent at affixed the adhesive stamp of Rs. 10 on the forged will (Exhibit PW - 5/44). He also stated that his signatures are not there in these documents and no one including the appellant appeared before him get them attested and these are forged documents. He is the independent witness, whose integrity cannot be doubted. He could not be summoned by the counsel of the appellant before Ld. trial court due to the mistake of said Ld. Counsel and the appellant may kindly be not held responsible for the mistake of counsel. Not only at trial court and first appellate court but even before this Hon'ble Court the Ld. counsels before the present one had not taken the case seriously. The copy of statement of Sh. Rakesh Kaushal and documents are annexed as Annexure: A-1 (Colly)

(vii) The Hon'ble Court may appreciate that in CWP No. 2404 of 2010 on 21.07.2010 the compensation of Rs. 50,000/- in favour of appellant was awarded against the Assistant Registrar, Co-operative Society, Gurugram for passing illegal orders to dispossess / illegally removing the appellant from above said house. The copy of order dated 21.07.2010 passed by this Hon'ble Court is annexed as Annexure A-2

4. That the respondent no. 1 had misused his power as the president of Chanderlok Co-operative House Building Society, DLF Qutab Enclave, Phase -IV, Gurugram and got passed illegal resolution for illegal transfer of the above house of appellant in connivance with others despite no loan pending against appellant which was given by respondent no. 1 and 2.

5. That the respondent no. 1 not only stopped in illegally giving possession to his Bhanja Rajaram / respondent no. 3 but even filed a false a fabricated complaint no. CHI / 214582013, date of institution 23.01.2006 and date of decision 28.02.2020 against the present appellant and others. In the said criminal case the present appellant is at sr. no. 4 as a accused. In the said complaint also the respondent no. 1 alleged that illegal loan was taken by appellant and others for their houses which were not on their names. The said Dayachand/ respondent no. 1 had alleged in this complaint that the appellant was not legal owner of the above said house. However, the Ld. JIMC, Gurugram vide order dated 28.02.2020 dismiss this complaint and acquitted the appellant with others from all



charges. This shows that how respondent no. 1 was misusing his power as the President of the above said society. Certified copy of the judgment dated 28.02.2020 is annexed as Annexure: A-3. Therefore, in the interest of justice, equity and fair play most respectfully it is prayed that the above said documents Exhibit: PW5/50, Exhibit: PW- 5/51, Exhibit: PW- 5/44 are clearly proving that the transfer of the house of appellant in the name of Rajaram / respondent no.3 is illegal, as all the three documents are forged. These documents were part of trial court evidence but were not considered by the Ld. Courts below. The witness in comi 270 /16 had clearly prove this forgery. Although the documents namely the statement of Sh. Rakesh Kaushal, Advocate and Notary was not part of the trial court record but in the in the interest of justice and provide real justice to appellate same may kindly be considered and person like Dayachand / respondent no. 1 who in the capacity of office bearer of the Chanderlok Co-operative House Building Society, DLF Qutab Enclave, Phase -IV, Gurugram, who misused his powers may please not be allowed to take benefits of same. Appeal may please be allowed.”

3. Discussion, Analyses and Decision:-

3.1 This Court has considered, analysed and evaluated the written submissions.

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3.2 The plaintiff wants to produce in additional evidence a copy of the Will, affidavit and agreement to sell. As per the oral statement of the learned counsel representing the appellant as well as his written submissions, the plaintiff has already produced the aforesaid documents in his evidence and the same are a part of the record.

3.3 Once the documents are a part of the record, the application for additional evidence to again produce the same, is not maintainable.

The last document sought to be produced on record is the statement of Sh. Rakesh Kaushal, Notary Public given in preliminary evidence in a



criminal complaint case. In this statement, he has stated that he has neither attested the affidavit nor the Will.

3.4 However, such oral statement is not sufficient to hold that the documents have never been executed by the plaintiff. In fact, the plaintiff admits her signatures. Not only she has signed but her son and son-in-law have also signed.

3.5 Ex.D11 is the receipt which has been signed by Harpal who has appeared in evidence as the plaintiff's witness and admitted that these documents were signed by her willingly on her own volition.

3.6 The statement of Sarabjit Singh has been found contradictory. Hence, the application for additional evidence does not have substance.

3.7 Consequently, dismissed.

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3.8 The first submission of the learned counsel representing the appellant is with respect to the additional evidence sought to be produced which has already been examined. Submission no.(ii) also lacks substance because it is only an oral statement of Sh.Rakesh Kaushal, the alleged Notary Public, in the preliminary evidence. The correctness of such statement is required to be adjudicated by the court. The statement given in preliminary evidence cannot be taken at its face value.

3.9 With regard to submission no.(iii), it may be noticed that though an FIR was registered by the appellant alleging her illegal dispossession, however, police filed the cancellation report after finding



no substance therein. Subsequently, criminal complaint is stated to be pending.

3.10 With regard to submission no.(iv), it may be noted that not only the appellant has signed the documents but her son Jaswinder and son in law Sarabjit Singh have also appended their signatures. Hence, the submission lacks merit.

3.11 The submission no.(v) is with regard to document sought to be produced in additional evidence.

3.12 Submission no.(vi) is again with reference to deposition of Sh.Rakesh Kaushal, Advocate which has already been examined.

3.13 Submission no.(vii) also does not have substance because the petitioner appears to have filed CWP-2404 of 2010, which was decided on 21.07.2010. While allowing the writ petition, the court directed the Assistant Registrar, Cooperative Societies to decide the matter afresh, after granting opportunity to the petitioner. The appellant has also produced copy of judgment passed in a criminal case instituted by the State. In the aforesaid case, Surinder Kaur- appellant was an accused. She has been acquitted however, that will not help the appellant.

3.14 The submission no.4 lacks substance because the plaintiff has failed to prove connivance.

3.15 The submission no.(v) is with regard to her acquittal, however, that itself will not be sufficient to decree the suit.

3.16 The last submission also lacks substance because once again reference has been made to the deposition of the Notary Public Sh.



Rakesh Kaushal. The aforesaid statement has already been examined. It has been noticed that the defendants have produced a significantly large number of documents to prove that the plaintiff resigned from membership of the Society and she executed not only agreement to sell but also Will, affidavit and various receipts.

3.17 Consequently, finding no merit, the appeal is dismissed.

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

29.05.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE