

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**104****RSA No.2346 of 2018 (O&M)
and CM-6268-C-2018
Reserved on : 18.01.2024
Date of Decision: 23.01.2024**

Arvind Kumar

....Appellant

VERSUS

Murti Devi and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Abhilaksh Grover, Advocate for the appellant.

ALKA SARIN, J.

1. The present appeal has been preferred by the plaintiff-appellant against the judgment and decree dated 19.07.2014 passed by the Trial Court and the judgment and decree dated 08.11.2017 passed by the First Appellate Court dismissing the suit filed by the plaintiff-appellant.

2. The brief facts relevant to the present *lis* are that Industrial Plot No.659 admeasuring 875.28 sq. yards was owned by one Sh. Dayal Singh son of Hira Singh and Balbir Singh son of Shri Nirmal Singh c/o Bahlson & Company, Cycle Spare Parts Dealer, Gill Road, Ludhiana. The said plot was allotted to them by the Chandigarh Administration. At the time of allotment there was a bar on sale of the said industrial plot for a period of 15 years from the date of completion. On 18.02.1974, before the period of 15 years had expired, the said vendors sold the plot to Smt. Murti Devi and Smt. Chandra Wati. At the time of sale No Objection Certificate was not taken from the Chandigarh Administration and since the 15 years' period was not over, no mutation was entered and the plot was not transferred in the

name of Smt. Murti Devi and Smt. Chandra Wati. The plaintiff-appellant claims to being a tenant in half portion of the premises. It was alleged that on 18.06.1995, Smt. Murti Devi and Smt. Chandra Wati agreed to sell the said industrial plot to the plaintiff-appellant for a total sale consideration of Rs.14,00,000/-. Rs.2,00,000/- was given as earnest money. However, no date for execution of the sale deed was fixed as the property had not been mutated in the names of Smt. Murti Devi and Smt. Chandra Wati. In 2004 the property is stated to have been transferred in favour of Smt. Murti Devi and Smt. Bimla Devi as in the meantime Smt. Chandra Wati had expired. It was further averred in the plaint that Smt. Murti Devi and Smt. Bimla Devi avoided to get the sale deed executed in favour of the plaintiff-appellant and on 02.12.2004 the plaintiff-appellant came to know that Smt. Murti Devi and Smt. Bimla Devi were trying to sell the property to defendant-respondent Nos.3 and 4 and had applied for No Objection Certificate from the Chandigarh Administration. Hence, the suit for specific performance and in the alternative for recovery of Rs.4,28,000/- was filed. On notice, defendant-respondent Nos.1 and 2 appeared and filed their written statement and took the plea that the suit was based on forged and fabricated documents and that the plaintiff-appellant was actually a tenant in a portion of the plot in question. The agreement to sell was denied so was the payment of the earnest money. It was further stated in the written statement that defendant-respondent Nos.1 and 2 had entered into an agreement to sell dated 28.05.2004 with defendant-respondent Nos.3 and 4 who had also filed a suit for specific performance. It was further the stand taken that the defendant-respondent Nos.3 and 4 and the plaintiff-appellant were in collusion and that even the defendant-respondent Nos.3 and 4 were not ready and willing to

perform their part of the contract. Lastly it was the stand taken that 50% of the share in the property had been transferred by the Estate Officer in favour of defendant-respondent Nos.1 and 2 vide letter dated 21.03.2003 and the matter regarding transfer of the remaining 50% of the share was still pending.

3. On the basis of the pleadings of the parties the following issues were framed :

- (1) Whether the plaintiff is entitled to the relief of specific performance by way of agreement dated 18.6.1995 ?
OPP
- (2) Whether in the alternative the plaintiff is entitled to the recovery as prayed for ? OPP
- (3) Whether the suit is within the limitation ? OPD
- (4) Whether the agreement to sell is forged and fabricated ?
OPD
- (5) Relief.

4. The Trial Court dismissed the suit vide judgment and decree dated 19.07.2014. Aggrieved by the same an appeal was preferred by the plaintiff-appellant which appeal was also dismissed vide judgment and decree dated 08.11.2017. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant has contended that both the Courts below have erred in holding that the agreement to sell was forged and fabricated. It is further the contention that the thumb impression of Chandra Wati could not be compared as it was smudged on the agreement to sell and that the signatures of Murti Devi were tallied and that it has erroneously been held by both the Courts below that the signatures were not

of the same person. Learned counsel for the plaintiff-appellant has also sought to rely upon judgment dated 06.08.2014 passed by the Judicial Magistrate Ist Class, Chandigarh, which has been filed along with an application (CM-6268-C-2018) under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 for producing as additional evidence before this Court. Learned counsel for the plaintiff-appellant submitted that vide said judgment dated 06.08.2014 the plaintiff-appellant has been acquitted of the charges framed against him and the same would be necessary for adjudication of the present case.

6. I have heard learned counsel for the plaintiff-appellant.

7. The Trial Court while dismissing the suit of the plaintiff-appellant had given five reasons for holding that the receipt was forged and fabricated. The first reason was that the thumb impression of Chandra Wati was not compared by the document and fingerprint expert produced by the plaintiff-appellant on the pretext that the same was smudged. It was held that the standard thumb impression of Chandra Wati was available on the lease deed and title deed. It was further the observation made that the fingerprint expert produced by the defendant-respondent Nos.1 and 2, namely, DW2 Davinder Parshad, had categorically opined that the thumb impression was forged and fabricated. The second reason given was that the signatures of Murti Devi appearing on Ex.P1 did not match with the admitted/standard signatures on the file. It was also observed by both the Courts below that the signatures of Murti Devi, even when compared with the naked eye, do not seem to be of the same person. The third reason given was that the marginal witness of Ex.P1, namely, Vinod Sood had stated in his cross-examination that he did not know in which year Ex.P1 was signed. He further stated that

he had never seen Murti Devi and Chandra Wati and he could not identify them and further that he had signed Ex.P1 on the asking of the plaintiff-appellant. The said witness turned hostile. Another marginal witness, namely, PW6 Shiv Gupta was produced as PW6 by the plaintiff-appellant, who is none other than the brother of the plaintiff-appellant. The fourth reason given was that the receipt (Ex.P1) did not have any revenue stamp or signatures of defendant-respondent No.1 and that the thumb impression of Chandra Wati was on a plain paper. The fifth reason given was that there was no date for the final payment. It has further been held by the Courts below that the plaintiff-appellant did not even have the sufficient amount to make the balance payment. The Trial Court held the suit to be hopelessly time barred. The said findings were affirmed by the First Appellate Court. The argument of learned counsel for the appellant that the signatures of Murti Devi on Ex.P1 matched with her standard signatures and that the Courts below had erred in holding otherwise cannot be accepted. A bare perusal of the questioned signatures of Murti Devi with that of her standard signatures clearly reveals that they are not by the same person. Further, there is no cogent reason coming forth as to why the thumb impression of Chandra Wati was not compared by the expert produced by the plaintiff-appellant. Further, the Courts below discarded the agreement to sell and the First Appellate Court inter-alia held that *“neither the signatures of Murti Devi nor thumb impression of Chandrawati has been proved to be there on receipt. It is not even stamped and is merely a receipt, which does not refer to any date for execution of the Sale Deed”*. Even one of the marginal witnesses produced by the plaintiff-appellant did not support his case. The second marginal witness who was then produced, namely, PW6 Shiv Gupta, is none

else than the brother of the plaintiff-appellant. Learned counsel for the plaintiff-appellant has not been able to convince this Court that the findings recorded by the Trial Court and the First Appellate Court are erroneous in any manner. No other point was argued.

8. There is no relevance of the judgment sought to be now produced as additional evidence. Learned counsel for the plaintiff-appellant has not been able to convince this Court that the application for additional evidence deserves consideration by this Court while hearing the second appeal and has also not been able to show how the said judgment is relevant inasmuch as it has been passed in a criminal case. Section 43 of the Evidence Act, 1872 states that the judgment, order or decree other than mentioned in Sections 40, 41 and 42, are irrelevant unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provision of the Act. It is trite that the judgment passed by the Criminal Court is not binding on the proceedings in the Civil Court. In view thereof, the application (CM-6268-C-2018) is dismissed.

9. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

23.01.2024
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO