

. Vs. Amarjeet Singh and Another

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Court : Punjab and Haryana

Decided On : Nov-29-2012

Appellant : .

Respondent : Amarjeet Singh and Another

Judgement :

Rs.No.1365 of 2010(O&M) and 1 Cross Objections No.29-C of 2012 IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH Rs.No.1365 of 2010(O&M) and Cross Objections No.29-C of 2012 Date of Decision:

29. 11.2012 .

Kuldeep Kaur and othersAppellants versus Amarjeet Singh and anotherRespondents CORAM: Hon'ble Mr.Justice Ajay Tewari Present: Mr.Amit Rawal, Senior Advocate with Mr.Sahil Khunger, Advocate for the appellants.

Mr.Parminster Singh, Advocate with Mr.Chanakya Pandit, Advocate for respondent No.1.

**** 1.

Whether Reporters of local papers may be allowed to see the judgment?.

2. To be referred to the Reporters or not?.

3. Whether the judgment should be reported in the Digest?.

Ajay Tewari, J.

(Oral).The brief facts under which the present appeal arises were that the respondent Amarjit Singh filed a suit for possession by way of specific performance of an agreement to sell dated 10.04.1996 and for setting aside a sale deed dated 21.08.2002 and the consequent mutation.

As per the plaint the appellant No.3 had agreed to sell suit land for a sale consideration of ` 1,05,000/- and had received a sum of Rs.80,000/- as earnest money and the possession was also handed over but before the target date sold the Rs.No.1365 of 2010(O&M) and 2 Cross Objections No.29-C of 2012 land to the appellant No.1 and got the Girdawari changed in the name of appellant No.2 without impleading respondent No.1.

It was further averred that thereafter the appellant dispossessed the respondent.

The case of the vendor-appellant was that actually though an agreement to sell had been entered into and the appellant No.3(vendor) had obtained a loan of ` 20,000/- from respondent No.1 and in fact appellant No.3 was owner only of 4/5th of the land and 1/5th was owned by his brother(respondent No.2).It was further alleged that since appellant No.3 had taken a loan from the respondent No.1 he was under the influence of the respondent.

The trial court held that the appellant No.3 during cross examination accepted that he had entered into an agreement to sell and had received the money.

However, it was further held that the appellant No.1 had been proved to be a bona fide transferee for valuable consideration without notice.

Consequently trial Court passed decree for recovery of the amount of double the earnest money.

The respondent No.1 filed an appeal.

The learned Lower Appellate Court reversed the finding in favour of appellant No.1 by holding that she was the wife of Bhupinder Singh who was the General Power of attorney of respondent No.2 who had been in the thick of the litigation between appellant No.3 and the respondent No.2.

Consequently Lower Appellate Court held that the preponderance of probability was that the appellant No.1 had notice of the prior agreement to sell in favour of respondent No.1.

Since it was proved that respondent No.2 was 1/5th owner Lower Appellate Court granted relief of specific performance with respect to 4/5th of the property which was owned by appellant No.3 and set aside the Rs.No.1365 of 2010(O&M) and 3 Cross Objections No.29-C of 2012 sale dated 21.08.2002 to the extent of 4/5th share of the appellant No.3.

When this appeal was filed, the following questions were proposed:- I.

Whether the learned additional District Judge has completely ignored the vital aspect that the agreement of sale dated 10.4.1996 (Ex.PW-3/A) is clearly a fabricated document as the stamp paper has been purchased on 16.1.1996 when defendant No.1 was not even the owner of the suit land?.

II.Whether the statements of PW-3 and PW-4 i.e.the attesting witnesses have been ignored wherein they have taken a contradictory stand that the stamp paper for the agreement (Ex.PW-3/A) was purchased on the same day on which the agreement was executed?.

III.Whether the learned Lower Appellate Court has failed to appreciate that even from a bare perusal by the naked eye, the signatures of Inder Pal on the agreement (Ex.PW-3/A) and extensions (Exs.PW-3/D and PW-3/E).there is a world of difference in the signatures which apparently show that the agreement is a forged and fabricated document?.

IV.Whether the learned Lower Appellate Court has erred in ignoring the mandatory provisions of Section 12 of the Specific Relief Act, 1963 while granting decree of enforcement of a part of the contract especially when the provisions as laid down

therein have not been complied with by the plaintiff-respondent No.1.?

V.Whether in the absence of any plea of bona fide purchaser and even in the absence of evidence in this regard, the Lower Appellate Court has erred in returning a finding with regard to the plea of bona fide purchaser?.

VI.Whether the impugned judgment and decree is patently illegal, ultra vires, void and is liable to be set aside?.

VII.Whether grave and manifest injustice has been caused to Rs.No.1365 of 2010(O&M) and 4 Cross Objections No.29-C of 2012 the appellants in the matter?.

Questions No.(I).(II).(III).(VI) and (VII) are pure questions of fact.

Learned counsel has taken me not only through the findings of fact recorded thereon but also the evidence but has not been able to persuade me that the findings of the courts below recorded thereon are either based on no evidence or on such perverse misreading of evidence so as to render them liable for interference under Section 100 CPC.

Therefore, questions No.(I).(II).(III).(VI) and (VII) are decided against the appellants.

As regards question No.(IV).the same, in my considered opinion, is covered both by sub-sections 2 and 3 of Section 12 of the Specific Relief Act, 1963.

As regards question No.(V).the said question does not lie in the mouth of the purchaser because if she self confessedly did not raise the plea of being a bona fide purchaser she can hardly be heard trying to not claim it in second appeal.

As regards the cross objections filed by respondent No.1, the following questions have been proposed:- i) Whether on the basis of admission and documentary evidence by virtue of Sections 90 and 91 of Indian Evidence Act, still the part of performance of agreement to sell 1/5th share can be declined and thus the findings of learned ADJ in this respect are ever sustainable in the eyes of law?.

ii) Whether the learned ADJ has wrongly disallowed the application for additional evidence by virtue to place and prove on record the judgment dated 22.11.2001, necessary for the just adjudication of the case are legally sustainable in the eyes of law?.

iii) Whether the finding in respect to declining of 1/5th share of specific performance of contract are ever sustainable in the Rs.No.1365 of 2010(O&M) and 5 Cross Objections No.29-C of 2012 eyes of law, against the evidence on record?.

Questions No.(i) and (iii) are related questions.

Learned counsel has not been able to persuade me that the finding of fact recorded by the courts below that respondent No.2 was owner of 1/5th share of the land is either based on no evidence or on such perverse misreading of evidence so as to render it liable for interference under Section 100 CPC.

As regards question No.(ii) no argument has been raised thereon.

Holding all the questions proposed against the appellant, the appeal and cross-objections are dismissed.

Since the main case has been decided, the pending Civil Misc.

Application, if any, also stands disposed of.

(AJAY TEWARI) JUDGE November 29, 2012 sunita

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