

Kaushalya Devi Vs Parkash Chand

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 17, 2011

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 39 Rule 1, Order 39 Rule 2

Constitution of India, 1950 â€” Article 227

Criminal Procedure Code, 1973 (CrPC) â€” Section 107, 151

Hon'ble Judges: Vijender Singh Malik, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Vijender Singh Malik, J.

This is a revision petition brought by the Defendant Kaushalya Devi under the provisions of Article 227 of the

Constitution of India for setting aside the judgment dated 10.5.2011 (Annexure P2) passed by Additional District Judge, Patiala, upholding the

order dated 8.1.2009 (Annexure P1) passed by Additional Civil Judge (Senior Division), Samana, whereby the application of Parkash Chand,

Plaintiff-respondent under Order 39 Rules 1 and 2 of CPC has been allowed.

2. Parkash Chand, Plaintiff has filed a suit for specific performance of agreement of sale dated 17.4.2008, executed by the Defendant in favour of

the Plaintiff for sale of the residential property detailed in the headnote of the plaint. He had also sought the relief of permanent injunction restraining

the Defendant from alienating the said house in any manner to any one except the Plaintiff.

3. The Defendant had taken some objections to the claim of the Plaintiff. According to her, no agreement was executed by her in favour of the

Plaintiff in respect of the house in question. She has claimed that she purchased the house in question from Nirranjan Dass on 10.12.1996 and had

let out the same to the Plaintiff at the rate of Rs. 3,000/- per month by virtue of rent note dated 17.12.1996. The Plaintiff did not pay rent after

1.6.1998 and, consequently, eviction was sought of the Plaintiff which was allowed. The possession of the property was delivered to the

Defendant on 11.12.2007. The Plaintiff forged the agreement of sale dated 17.4.2008 and tried to take forcible possession of the house in

question, for which proceedings under Sections 107/151 of Code of Criminal Procedure were initiated, which were pending before Sub Divisional

Magistrate, Samana. On coming to know of the alleged agreement of sale dated 17.4.2008, the Defendant has filed an application before Deputy

Superintendent of Police, Samana.

4. Considering the rival pleadings of the parties and the documents on record, learned Additional Civil Judge (Senior Division), Samana, found a

prima facie case in favour of the Plaintiff and noticing that balance of convenience is in favour of the Plaintiff and that he shall suffer irreparable loss

by litigating against the third person, allowed the application and restrained the Defendant from alienating the suit property in any manner in favour

of any one, except the Plaintiff till disposal of the suit.

5. Appeal preferred by the Defendant against the said order went against her before Additional District Judge, Patiala vide judgment dated

10.5.2011.

6. Aggrieved by the aforesaid orders, the present revision petition has been filed.

7. I have heard Shri Ashok Goel, Learned Counsel for the Petitioner and have gone through the record.

8. Learned Counsel for the Petitioner has submitted that after litigating with the Plaintiff for about a decade, where she succeeded in obtaining

possession of the disputed premises, it was not possible for her to agree to sell the suit property in favour of the said tenant. According to him, the

Petitioner lodged FIR claiming the Plaintiff to have forged the agreement of sale. According to him, even the marginal witnesses of the agreement of

sale have filed their affidavits to the effect that they did not attest the agreement of sale. He has submitted that in these circumstances, no

discretionary relief could be allowed to the Plaintiff.

9. The Plaintiff has brought suit for specific performance of the agreement of sale dated 17.4.2008. After the success in the eviction proceedings,

the Defendant obtained possession of the premises on 11.12.2007. It is the submission of Learned Counsel for the Petitioner that after succeeding

in that round of litigation, it was not possible for the landlady to have entered into the agreement of sale of house in question in favour of the tenant.

No such inference is available upon the facts of this case. It cannot be said that the land lady, who has been successful in getting her premises

vacated, could never agree to sell the property in favour of the ejected tenant.

10. The question that arises for answer is as to whether the agreement of sale dated 17.4.2008 is a forged and fabricated document. Mere fact

that the Defendant lodged a report with Deputy Superintendent of Police on 17.4.2008 claiming the document to be forged and had procured the

affidavits of marginal witnesses, would not prove that the document is forged and fabricated. The Plaintiff has to be given an opportunity to lead

evidence to prove the execution of the agreement of sale by Defendant in his favour. If ultimately, it is found that the agreement is forged and

fabricated, the Plaintiff would be inviting liability to punishment under criminal law. However, before a finding to that effect comes, the document

cannot be held to be prima facie forged and fabricated. The genuineness of the affidavits is also to be decided after taking evidence. In these

circumstances, to avoid multiplicity of litigation, learned courts below have rightly restrained the Defendant from alienating the suit property in

favour of any one, except the Plaintiff.

11. For these reasons, I find no perversity in the decisions of the learned courts below and, therefore, finding no reason to interfere with the

impugned order, dismiss the revision petition. However, keeping in view the peculiar facts of this case, I direct learned trial court to decide the suit

within one year from the date of receipt of copy of this order.