

(2011) 10 P&H CK 0127

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Revision No. 6318 of 2011 (O and M)

Kaushalya Devi

APPELLANT

Vs

Parkash Chand

RESPONDENT

Date of Decision: Oct. 17, 2011**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2
- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - 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 Niranjana 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.