

(2011) 09 P&H CK 0198

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3580 of 2011 (O and M)

Balvir Kaur and Another

APPELLANT

Vs

Smt. Taro Bai

RESPONDENT

Date of Decision: Sept. 1, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 3, 151

Citation: (2011) 4 CivCC 595 : (2011) 164 PLR 249

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.
Civil Misc. No. 9961-C of 2011

For the reasons stated in the application, the same is allowed. Delay of 37 days in re-filing of the appeal is condoned.

Civil Misc. No. 9965-C of 2011

The present application has been filed under Order 22 Rule 3 read with Section 151 CPC for bringing on record the legal representatives of appellant No. 1-Balvir Kaur, whose names are mentioned in paragraph No. 4 thereof.

For the reasons stated in the application, the same is allowed subject all just exceptions. The Registry is directed to amend the memo of parties.

Regular Second Appeal No. 3530 of 2011

The respondent/plaintiff had instituted a suit for specific performance of agreement to sell dated 6.2.2006 which had been decreed by the trial Court. The appeal filed by the present appellants/defendants was also dismissed by the lower Appellate Court. Hence, the present regular second appeal has been filed.

2. Briefly stated, the respondent/plaintiff had filed a suit for possession by way of specific performance of agreement to sell dated 6.2.2006. It was pleaded in the suit that the defendants are owners in possession of the house, detail and description whereof is given in head note of the plaint. It was averred that agreement to sell dated 6.2.2006 was arrived at between plaintiff No. 1 and the defendants for a total sale consideration of Rs. 2,17,000, out of which Rs. 35,000 was paid as earnest money to the defendants in presence of the attesting witnesses. The agreement was read over and explained to the parties. 5.5.2006 was the stipulated date for payment of balance sale consideration and for execution and registration of the sale deed. It was further pleaded that on the date fixed for registration of the sale deed, the plaintiff along with the balance sale consideration and registration expenses remained present in the office of Sub Registrar, Jalalabad, but the defendants never came to perform their part of the agreement to sell. Thereafter, the plaintiff had approached the defendants to perform their part of the agreement but they stated that the sale consideration was Rs. 3,17,000 instead of Rs. 2,17,000. Since the defendants were not performing their part of agreement, the suit for specific performance of agreement to sell dated 6.2.2006 was filed. In the suit, an alternative plea for recovery of Rs. 2,17,000 was also made out of which Rs. 35,000 was sought as refund of earnest money paid and Rs. 1,82,000 as damages.

3. Upon notice, the defendants had caused appearance and filed written statement raising preliminary objections regarding maintainability of the suit, locus standi of the plaintiff and cause of action. The defendants admitted that they are owners in possession of the house in dispute. It is further stated that they never agreed to sell the house for a sum of Rs. 2,17,000 but the agreement was executed for a consideration of Rs. 3,17,000. It was further stated that no earnest money was received by the defendants in the presence of the marginal witnesses or the Deed Writer at the time when agreement to sell was written, whereas Balvir Kaur was polio affected.

4. The trial Court, after completion of the pleadings, had formulated the following issues:

1. Whether the defendants agreed to sell the disputed house for consideration of Rs. 2,17,000? OPP

2. Whether the plaintiff remained ready and willing to execute the sale deed? OPP

3. Whether agreement to sell is forged by the plaintiff in connivance with the marginal witnesses and Scribe? OPD

4. Whether suit is not maintainable in the present form? OPD

5. Relief.

5. The trial Court, after evaluating the evidence led by the parties, held that the defendants have failed to prove the plea taken by them in their written statement. It

was stated that during cross-examination, a number of admissions have been made by the defendants. The trial Court held as under:

18...A number of admissions have come out of their mouths during their cross-examination which fully support the case of the plaintiff. In her cross-examination at page No. 2 DW. 1 Balbir Kaur (defendant No. 1) has clearly admitted that on 6.2.2006 she and her brother executed an agreement in favour of plaintiff Taro Bibi. She has further admitted on page No. 3 of her cross-examination that along with balance sale consideration Taro Bibi had come present in the office of Sub Registrar but she (DW. 1) did not come present and that she does not know if Kulwinder Singh had come there or not. It is also admitted by her in her cross-examination on the same page that she (Taro Bibi) had sent a notice to them which was received by them...

6. The trial Court further held that from a perusal of cross-examination of all the three witnesses of the defendants i.e. Defendant No. 1-Balvir Kaur, defendant No. 2-Kulwinder Singh and their father Malook Singh DW. 3, it has been proved to the satisfaction of the Court that on 6.2.2006, both the defendants had agreed to sell the suit property in favour of the plaintiff. The Court further held that on the stipulated date, the plaintiff, along with remaining sale consideration, was present in the office of the Sub Registrar, Jalalabad, but the defendants had not come forward to receive the sale consideration and to execute the sale deed. Thus, the trial Court held that agreement to sell Ex. PX was indeed arrived at between the parties and the sale consideration was Rs. 2,17,000 and not Rs. 3,17,000. The lower Appellate Court had affirmed the findings returned by the trial Court.

7. Mr. Kataria, Advocate, appearing for the appellants/defendants, has submitted that no attesting witness to agreement to sell was examined. It is further submitted that even though the Scribe appeared as a witness and stated that agreement to sell was arrived at between the parties, he has not brought the register in the Court wherein the entries to that effect were made. Thus, it is submitted that material piece of evidence was withheld from the Court. Both the Courts below, after appreciating the evidence, have held that in view of various admissions made by the defendants, execution of agreement to sell stands proved. The defendants have only disputed the amount of sale consideration and according to them it was Rs. 3,17,000, whereas according to the plaintiff/appellant, it was Rs. 2,17,000. Both the Courts below have given a categorical finding that agreement to sell Ex. PX is free from blemish of forgery or tampering. In view of the findings returned by both the Courts below, after appreciating the evidence, this Court will be hesitant to cause interference, especially when learned counsel for the appellants/defendants has failed to formulate any question of law, much less a substantial one, for consideration of this Court during the course of arguments.

8. Hence, there is no merit in the present appeal and the same is hereby dismissed, in limine.

Civil Misc. No. 9962-C of 2011

The present application has been filed for condonation of delay of 16 days in filing of the appeal.

Since the appeal has been dismissed, no separate orders are required to be passed in the present application.