

(2016) 01 P&H CK 0095
In the Punjab And Haryana At Chandigarh
Case No : RSA No. 4841 of 2015

Secretary, The Haryana State Cooperative Housing Building Society

APPELLANT

Vs

Lali Devi and another

RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Contract Act, 1872 — Section 37

Citation : (2016) 5 RCRCivil 47

Hon'ble Judges : Paramjeet Singh Dhaliwal, J.

Bench : Single Bench

Advocate : Shashikant Gupta, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Paramjeet Singh Dhaliwal, J. (Oral) - This regular second appeal by defendant No. 2 is directed against the judgment and decree dated 26.05.2014 passed by learned Addl. Civil Judge (Senior Division), Narnaul, whereby suit for declaration filed by respondent-plaintiff has been decreed and against the judgment and decree dated 17.04.2015 passed by learned District Judge, Narnaul, whereby appeal preferred by the appellant-defendant No. 2 has been dismissed.

2. For convenience sake, hereinafter, reference to parties is being made as per their status in civil suit.

3. The detailed facts are already recapitulated in the judgments of the Courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that the respondent-plaintiff had filed a suit for declaration and mandatory injunction against the appellant that she had availed a loan for construction from the appellant. As a security for the loan amount, she has deposited the sale deed. The respondent-plaintiff has paid the loan amount and in this regard "No Dues Certificate" was issued by the appellant but the documents were not returned in spite of repeated requests

made to the appellant. Hence, suit was filed.

4. Upon notice, the appellant/defendant No. 2 resisted the suit and filed written statement taking various preliminary objections. It was pleaded that respondent-plaintiff had taken a loan for construction purposes from appellant/defendant No. 2 and had deposited sale deed as a security of the loan. It was further pleaded that sale deed is in the custody of defendant No. 1. "No Due Certificate" was issued to the respondent-plaintiff on 29.02.2004. It was pleaded that the suit was time barred. It was further pleaded that the plaintiff had also filed a complaint against the defendants before District Consumer Court, Narnaul but subsequently withdrew the same. On these grounds prayer for dismissal of the suit was made. On the basis of pleadings of parties, the Court of first instance framed following issues :

"1. Whether the plaintiff is entitled to back the sale deed bearing Vasika No. 399 dated 24.05.1979 from the defendant? OPP.

2. Whether the present suit is not maintainable? OPP.

3. Relief."

5. After appreciating the evidence, the Court of first instance decreed the suit. Feeling aggrieved, the defendant No. 2 preferred an appeal which has been dismissed by the lower Appellate Court. Hence, this second appeal.

6. Learned counsel for the appellant contended that following substantial questions of law are involved in the present regular second appeal :-

"1. Whether the judgments and decrees passed by both the courts below are based upon conjectures and surmises and hence liable to be set-aside?

2. Whether the direction issued by the learned Civil Court to hand over the sale deed to the plaintiff-respondent No. 1 is illegal?

3. Whether Civil Court has no jurisdiction as per Section 128 of the Haryana State Cooperative Societies Act to try and entertain this suit?

4. Whether grave and manifest injustice has been caused to the appellant?

7. I have heard learned counsel for the appellant and perused the record.

8. Concurrent findings have been recorded by both the Courts below holding that the entire amount has been paid but in spite of payment of the loan amount, documents have not been returned. Admittedly, the plaintiff-respondent had deposited all the documents with the appellant/defendant No.

9. Learned counsel for the appellant contended that the appellant/defendant No. 2 has further deposited the documents with respondent No. 2 in the present petition, so direction issued against the appellant is against law. Such contentions cannot be accepted. Once the plaintiff-respondent Smt. Lali Devi approached the appellant for loan and deposited the documents as a security for

the loan and subsequently paid the loan amount to the appellant, the appellant cannot refuse return of the documents by saying that the documents are lying with some other defendant. It is the duty of the appellant to return the documents which he received. Once a person pays the entire amount, documents deposited as collateral security are bound to be returned to the person. The action of the appellant is totally illegal, biased and arbitrary and has caused unnecessary harassment to the plaintiff/respondent forcing her to approach the Court. This Court intended to impose exemplary costs for filing this regular second appeal but since the society is involved, this Court is refraining from doing so.

10. There is no question of law, much less substantial question of law involved in this appeal. This appeal apparently appears to be frivolous.

11. Dismissed.