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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

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Date of Decision: 28.05.2024.

Neelam

...Appellant.

Versus

Dharamvir

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Aman Pal, Advocate for the appellant.

Sukhvinder Kaur, J.

The instant Regular Second Appeal has been filed by appellant/ plaintiff against the concurrent findings recorded by both the Courts below vide which the suit of the plaintiff was dismissed.

2. Brief facts of the case as per plaint are that the plaintiff had filed a suit for declaration to the effect that the sale deed dated 06.02.2002, qua the land fully detailed in para No.1 of the plaint, is null and void and not binding upon the rights of the plaintiff and same may be ordered to be cancelled with consequential relief of permanent injunction restraining the defendant from alienating, encumbering or transferring the suit land to any person. The plaintiff further prayed that though the plaintiff is in joint possession of the suit land, if, due to any eventuality, this Court comes to the conclusion that she is not in possession of the suit land, then a decree for possession of the suit land may also be passed in her favour.

3. The plaintiff has alleged in the plaint that she is the owner in joint possession of the land as described in para No.1 of the plaint after

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having succeeded the said land alongwith the other land from her father Churia @ Indraj as well as her father's brother, namely Mussadi. The plaintiff had been living under the care and custody of her real sister Sunita and the defendant, who is the husband of Sunita, right from her childhood. It has been further submitted that right from the beginning, the plaintiff had all faith and confidence in the defendant as well as in her sister Sunita Devi and they had been managing the affairs of the property of the plaintiff as guardian showing all respect and care to her. The plaintiff had very good relations with the defendant and his wife in comparison to the relation with her mother. The defendant and his wife were having fiduciary relationship with the plaintiff and they were in dominating position as she was wholly dependent upon the defendant and his wife Sunita Devi for her future and proposed married life. It has been alleged that the plaintiff got married on 02.02.2006 and the family of plaintiff's husband was in need of loan for purchase of land for business and they asked the plaintiff to mortgage her land for securing the loan. It has been alleged that about a month ago, when the plaintiff and her husband approached the Halqua Patwari of village Bohli and asked him to supply certified copy of the jamabandi of the land owned by the plaintiff, she came to know, to her utter surprise and shock, that her entire land had been transferred by the dint of two fictitious sale deeds, one in favour of the defendant and the other in favour of Sunita Devi. The plaintiff has submitted that she faintly remembered that on two occasions, the defendant and his wife had taken her to Tehsil premises on the pretext of obtaining loan and for giving surety for securing loan in

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favour of the defendant. As the plaintiff was under the control of the defendant and his wife, and the defendant was in a dominating position, he exercised undue influence and took advantage of fiduciary relationship in order to obtain the signatures of the plaintiff on various papers on the pretext of completing formalities of securing loan against her property. It has been alleged that the sale deed dated 06.02.2002 is a fictitious document and is an outcome of fraud played by the defendant and his wife and no consideration was ever paid to the plaintiff.

4. Upon notice, respondent/ defendant appeared and filed written statement by taking preliminary objections regarding maintainability; estoppel; res-judicata etc. It was alleged that the plaintiff had admitted the sale deed in question as genuine against sale consideration in civil suit No.292/ 14.02.2002/ 21.09.2005. It was also alleged that the aforesaid sale deed had been scribed by a regular Deed Writer on the instructions of the plaintiff and the entire sale consideration had been received by the plaintiff in the presence of Sub-Registrar, Thanesar at the time of registration of the sale deed in question and mutation thereof was also entered and sanctioned with the consent of the plaintiff. It was also alleged that the plaintiff got married to one Jasbir Singh on 02.02.2006 and the sale consideration was utilized by the plaintiff to meet out her marriage expenses in part. It was alleged that there was a fiduciary relationship of the plaintiff with the defendant and the defendant and his wife were never in a dominating position over the plaintiff and the plaintiff never remained under their guardianship. The defendant was well aware about both the sale deeds

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which were executed for valuable consideration by the plaintiff and mutation was also sanctioned on the basis of the said sale deeds and the same are legal, valid and binding on the rights of the plaintiff.

5. The plaintiff also filed replication to the written statement filed by the defendant, while denying the averments of the written statement and reiterated the averments made in the plaint.

6. From the pleadings of the parties following issues were framed:-

1. *Whether the sale deed dated 06.02.2002 is null and void as alleged? OPP*
2. *If issue No.1 is proved, whether plaintiff is entitled to relief of permanent injunction? OPP*
3. *Whether the sale deed dated 06.02.2002 was executed with free consent and without any undue influence and for valid consideration? OPD*
4. *Whether the suit is not maintainable? OPD*
5. *Whether plaintiff is estopped by her own act and conduct from filing the present suit? OPD*
6. *Whether suit is barred by principle of res judicate? OPD*
7. *Relief.*

7. Therefore, the parties led their respective evidence.

8. The suit of plaintiff was dismissed by the trial Court, vide judgment and decree dated 16.04.2016. The appeal preferred by the appellant/ plaintiff before the First Appellate Court was dismissed, vide judgment and decree dated 11.07.2023. Hence, the present Regular Second Appeal has been filed by the appellant/plaintiff.

9. Learned counsel for the appellant/ plaintiff has contended that

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the trial Court has failed to appreciate the fact that the plaintiff was living under the care and custody of the defendant and his wife and the fraud is to be inferred from the circumstances. The Deed Writer and Sub-Registrar always depose in favour of the document and they never admit that they were a party to the fraud played by the defendant with the plaintiff. He has argued that the statement of Deed Writer is of no relevance as sale consideration was not paid in his presence and Som Nath, Lambardar, witness of the alleged sale deed is a stock witness. He has contended that it has also not been appreciated by the Courts below that the defendant had no source of money to pay the sale consideration of Rs.15,00,000/- to the plaintiff. He has submitted that a prudent person would never alienate his land at the meager sale consideration of Rs.2.5 lakhs per acre when the market value of the suit property was more than Rs.15 lakhs per acre in the year 2002. He has submitted that the plaintiff was under the firm belief that she was still owner of the suit property and only for that purpose, she had executed a Power of Attorney in favoaur of Sunita, in good faith. He has urged that it has been wrongly held that the written statement filed by the plaintiff in case titled 'Baldevi Vs. Sunita amounts to admission of the execution of the sale deed by her. In support of his contentions, he has placed reliance upon the judgment of Hon'ble Supreme Court in **Ladli Prashad Jaiswal Vs. The Karnal Distillery Co. Ltd., Karnal and others** in Civil Appeal No.535 of 1960, decided on 17.12.1962 and **Anil Rishi Vs. Gurbaksh Singh**, in Civil Appeal No.2413 of 2006, decided on 02.05.2006.

10. I have heard learned counsel for the appellant and have gone

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through the relevant record.

11. This fact is not disputed that the plaintiff was owner of total ten acres of land. Two sale deeds were executed by the plaintiff, one in favour of her sister Sunita for four acres of land vide sale deed dated 30.12..2004. This sale deed was challenged by the plaintiff by filing a separate suit and other sale deed for six acre was executed by the plaintiff in favour of the Dharambir (defendant in the present suit) vide sale deed dated 06.02.2002, which is under challenge in the present suit. The plaintiff has admitted in her evidence that the sale deed dated 06.02.2002 bears her signatures. She also identified her photograph upon Ex.D1 but it has been alleged that the sale deed was executed under the undue influence and fraud by the defendant and no consideration was ever paid to her in lieu of transfer of the suit land. But the pleas taken by the plaintiff appear to be contrary to each other. On the one hand she has alleged that she was under undue influence and on the other hand, she has alleged that fraud was played upon her by the defendant alongwith his wife. Both these pleas are contradictory and inconsistent to each other. In case of undue influence she had the knowledge of the nature of transaction being effected by her but in case of fraud, she would be oblivious of the nature of the said transaction. Merely because the parties were nearly related to each other does not give rise to the presumption of undue influence.

12. It has been alleged that on two occasions, the defendant and his wife had taken her to the Tehsil premises on the pretext of obtaining loan and for taking her surety for securing loan in favour of the defendant where

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her signatures were obtained on various paper under undue influence and by taking the advantage of fiduciary relations between the parties. But it is not the case of the plaintiff that she was an illiterate woman who was not aware of the difference between a sale deed and a surety/ guarantee document. Moreover, this fact is also to be taken note of that the sale deed had been scribed by a regular Deed Writer under instructions of the plaintiff and the same had been executed in the presence of two attesting witnesses including a village Lambardar. Then it was presented before the Tehsildar/ Sub-Registrar, and was got registered as per law.

13. As the deed writer Jagir Singh Saini had expired, so his son Parveen Kumar has been examined as DW4, who had deposed that on 06.02.2002, the plaintiff got sale deed No.6158/1 executed regarding the sale of 48 kanals of land in favour of the defendants and the said sale deed had been typed by him at dictation of his father at the instance of the plaintiff Neelam Devi. After preparing and typing the said document, it was read over to the plaintiff and the defendant, and the witnesses and she had signed upon the same in front of him in the presence of the attesting witnesses. He has stated that the entry was made by his father in the Deed Writer register upon which the plaintiff had put her signature corresponding to that entry. He has stated that the plaintiff had informed regarding the receiving of sale consideration of Rs.15 lakhs at her residence from the defendant. On the date of execution of the sale deed dated 06.02.2002, she was fully conscious and was not under undue influence of anyone and was in a position to decide her good or bad.

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14. DW13-Som Nath Lambardar, who was one of the attesting witness of the aforesaid sale deed has also deposed on the similar lines. The Tehsildar, who had registered the sale deed had also been examined as DW7 and he has testified regarding registration of the sale deed by following the due procedure.

15. The written statement Ex.D2 was filed in case titled as 'Baldevi Vs. Sunita Devi and others' where sale deed dated 06.02.2002 was challenged by the plaintiff's mother. Then written statement had been filed by the plaintiff jointly with the defendant of the present case, with the averments in para No.7 of the said written statement that Dharamvir (defendant in the present case) was a bonafide purchaser for a valuable sale consideration through sale deed dated 06.02.2002. In para No.9 of said written statement which was duly signed by the plaintiff, it was mentioned that defendant No.3 (plaintiff in the present case) had transferred six acres of land through registered sale deed in favour of defendant No.4 (defendant in the present case) for valuable consideration and a sum of Rs.15,00,000/- had been received by defendant No.3 (plaintiff in the present case) from defendant and mutation of said sale deed had been rightly sanctioned. So, it has been rightly observed by the Courts below, that, thus the plaintiff herself has admitted in the aforesaid written statement that sale deed dated 06.02.2002 was duly executed by her in favour of the defendant Dharamvir for sale consideration of Rs.15,00,000/- and this sale consideration was received by her from the defendant.

16. The plaintiff has stated in her testimony that at the time of her

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marriage, she had taken an Esteem Car, television, Air Conditioner, Refrigerator and gold ornaments alongwith her to her matrimonial house. So from this also, it can be inferred that these items could have only been purchased by the plaintiff from the sale consideration which was received by her from the defendant, as no other source had been disclosed by the plaintiff vide which she could have purchased above said items. DW3-Som Nath, Lamberdar, has also deposed regarding passing of the consideration when she stated that Rs.15,00,000/- were given to the plaintiff by the defendant in his presence a day before the execution of the sale deed.

17. So far as, the case law cited by learned counsel for the appellant is concerned, the same is of no help being based on the distinguishable facts and being not applicable in the peculiar facts and circumstances of the present case.

18. For the reasons recorded above, the present Regular Second Appeal fails as it does not raise any question of law much less substantial question of law.

19. Appeal stands dismissed being bereft of merits.

20. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

28.05.2024.

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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No