



RSA-3427-2018 (O&M)

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

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RSA-3427-2018 (O&M)

Date of decision: 21.07.2026

Binder Kaur

....Appellant

Versus

Bhalwinder Kaur @ Balwinder Kaur

....Respondent

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Surinder Garg, Advocate,
for the appellant.

Mr. Madan Sandhu, Advocate,
for the respondent.

HARSH BUNGER J. (ORAL)

1. For convenience, the parties herein are being addressed as per their status in the original suit.
2. Present regular second appeal, has been filed by defendant (Binder Kaur) against the judgment and decree dated 17.07.2017 passed by learned Additional District Judge, Mansa, wherein he has reversed the findings returned by learned Trial Court vide judgment and decree dated 01.09.2016, in a suit for declaration, filed by the plaintiff (Bhalwinder Kaur @ Balwinder Kaur).
3. Briefly, plaintiff (Bhalwinder Kaur @ Balwinder Kaur) filed a suit for declaration against defendant (Binder Kaur) on the plea that she was joint owner in possession of the suit land measuring 43 kanal 6 marla to the



extent of 11/60 share. It was pleaded that the defendant was her niece (being daughter of plaintiff's brother, namely, Marra Singh son of Harnek Singh). It was also pleaded that the plaintiffs' brother Marra Singh was also co-sharer in the suit land however, he had expired and upon his demise, the property of Marra Singh was inherited by his wife Ranjeet Kaur alongwith defendant (Binder Kaur). It was averred that the land of the plaintiff as well as the defendant was joint and they were continuing in possession of the suit land alongwith other co-owners. It was also stated that after the demise of Marra Singh, his widow Ranjeet Kaur got married with one Baljit Singh.

3.1 It is pleaded case of the plaintiff that the defendant took plaintiff to the Tehsil Office, Mansa, for the purpose of effecting partition of the suit land, accompanied by Baljit Singh and one Lamberdar Gian Singh. It was stated that the defendant took the plaintiff to Advocate Pankaj Singla on the pretext that partition deed was to be scribed, whereas the defendant had already got scribed the transfer deed from the said Advocate. It was averred that since the plaintiff trusted the defendant on account of their relationship therefore, she signed/thumb marked the documents, although she never gave consent for execution of any transfer deed, which was, in fact, a result of misrepresentation and fraud committed by the defendant. It was stated that there was no reason for the plaintiff to have executed the transfer deed in favour of the defendant as the plaintiff herself was a widow and one of her son had also died, but her other son, namely, Jaspal Singh was still alive, who was married therefore, there was no question of executing the transfer deed by the plaintiff in favour of the defendant.



Accordingly, it was claimed that the transfer deed pertaining to about 4 kanal of land and also the consequent Mutation No.3448 dated 10.09.2014 are wrong, illegal and liable to be set aside. On the basis of the aforesaid stand, the plaintiff filed a suit for declaration.

3.2 Upon issuance of notice in the suit, the defendant appeared and filed a written statement *inter alia* taking certain preliminary objection. On merits, it was conceded that the plaintiff and the defendant are co-owners in the suit land alongwith the other co-sharers. It was claimed that the transfer deed was executed by the plaintiff in favour of the defendant out of love and affection. It was stated that the transfer deed was a registered document and it was binding on the plaintiff accordingly, prayer for dismissal of the suit was made.

4. From the pleadings of the parties, the learned trial Court framed the following issues:-

- “1. *Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP*
2. *Whether the transfer deed No.2897 dated 05.09.2014 is illegal, forged and fabricated document? OPP*
3. *Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD*
4. *Whether the suit is not maintainable in the present form? OPD*
5. *Whether the plaintiff has concealed the true and material facts from the Court? OPD*
6. *Relief.”*



5. Thereafter, the parties led their respective evidence (oral as well as documentary) in support of their claims on the aforesaid issues.

6. The learned trial Court, vide judgment and decree dated 01.09.2016, dismissed the suit of the plaintiff.

7. Feeling aggrieved against the trial Court's judgment and decree dated 01.09.2016, the plaintiff preferred an appeal before the learned Additional District Judge, Mansa, which has been allowed, vide judgment and decree 17.07.2017, whereby the judgment and decree dated 01.09.2016 has been set aside and the suit of the plaintiff has been decreed.

8. In the aforementioned facts and circumstances, the present regular second appeal has been filed before this Court.

9. I have heard learned counsel for the respective parties and perused the paper-book with their able assistance.

10. In the present case, concededly the suit for declaration filed by the plaintiff was dismissed by the learned trial Court however, learned First Appellate Court allowed the appeal filed by the plaintiff and decreed the suit by framing the following point of determination, i.e.:

“Whether the Transfer Deed No.2897 dated 05.09.2014 is a valid document?

11. After appreciating the facts, pleadings as well as the evidence available on record, learned First Appellate Court has returned the following findings:-

“20. On appraisal of evidence on record, it transpires that Bhalwinder Kaur was co-sharer to the extent of 11/16th share in land admeasuring 43 kanal 6 marla situated in the revenue limit



of village Chakerian as per Ex.P1. Ex.DA is the alleged transfer deed effected by Bhalwinder Kaur in favour of Binder Kaur. Reading of the same indicates that it has been attested by Gian Singh, Numberdar and Baljit Singh. It also bears the signature of Bhalwinder Kaur and Binder Kaur. Reading of it further indicates that 4 kanal of land has been transferred by Bhalwinder Kaur in favour of Binder Kaur for a sum of Rs.3,50,000/-. The aforesaid transfer deed/sale deed has been impugned by the plaintiff on the ground of fraud with respect to the nature of document having been executed by the parties. Learned trial Court declined the relief to the plaintiff solely on the ground that transfer deed is a registered document, however, learned trial Court failed to take note of the evidence led on record and further legal position obtainable in the case. The Apex Court considering the difference between void and voidable transaction in Ningawwa v. Byrappa Shiddappa, AIR 1968 SC 956, brought out the difference between a fraudulent misrepresentation as to the character of a document and as to the contents of a document. With reference to the former the transaction is void, while in the case of the latter, it is merely voidable.

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Further, the burden of proving the good faith in such a situation would be governed by Section 111 of the Indian Evidence Act which states:

"Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence."



21. *In the instant case, plaintiff has been able to prove the fraud having been played by the defendant by making misrepresentation with respect to the nature of document being executed by the parties. The following proved facts, which were ignored by ld. trial court, shows that transfer deed Ex.DA is void ab-initio:-*

(i) *The relationship between the plaintiff and defendant is admitted. Admittedly, defendant is the real niece of the plaintiff. The relationship between them was cordial. Plaintiff is aged more than 60 years and on account of close and cordial relationship between the parties, plaintiff reposed full faith and trust upon the defendant.*

Thus, there was both an occasion as well as opportunity with the defendant to coax/beguile the plaintiff by making misrepresentation and getting the aforesaid document executed in her favour on the strength of misrepresentation.

(ii) *Plaintiff has two sons namely Avtar Singh and Jaspal Singh. Avtar Singh had expired earlier and is survived by two daughters. They all are residing together. Thus plaintiff has her own progeny with whom she is residing and there was no question of executing a transfer deed in favour of defendant without any consideration.*

(iii) *The attesting witness namely Baljit Singh has deposed in favour of plaintiff and he has also stated that he alongwith Bhalwinder Kaur were taken to the Tehsil office, Mansa by defendant on the pretext of effecting partition of the joint land. It is further noteworthy that the suit land was joint land which had not been*



partitioned at the time of execution of aforesaid transfer deed.

- (iv) *The case set up by the defendant in her written statement is totally different from what she has stated in the Court. Reading of written statement indicates that the alleged transfer deed was stated to be executed on account of love and affection and without consideration whereas in the transfer deed there is recital regarding payment of sale consideration of Rs.350,000/-. Realizing her mistake, she sets up a different case in her evidence where she states that she paid a sum of Rs.15,00,000/- to the plaintiff for the aforesaid transfer of land. However, she has not been able to show the transfer of aforesaid sale consideration to the plaintiff. In the absence of the same, the entire transaction falls to the ground. She has tried to rely on some documents which have not been proved on record to show that she raised a loan to pay some amount of sale consideration, however, the aforesaid documents are subsequent in point of time i.e. those pertain to December, 2014 whereas transfer deed has been allegedly executed on 05.09.2014. Thus, these documents, even if proved, would have been of no avail to the defendant.*
- (v) *Defendant failed to examine second attesting witness Gian Singh to show that the aforesaid document has been validly executed between the parties. This was incumbent on her as the other attesting witness namely Baljit Singh had deposed against the defendant. Plaintiff as well as all her witnesses have categorically deposed that defendant held out*



misrepresentation and under the pretext of effecting partition of the joint land got executed a transfer deed in her favour. Both the parties as well as witnesses got examined are close relatives and therefore, the question of their falsely deposing in the absence of any inimical relation towards the defendant is also ruled out.

(vi) Plaintiff immediately challenged the alleged transfer deed on getting wind of the fraud played by the defendant. This fact also goes a long way to corroborate the claim of the plaintiff. Had she received the sale consideration as is being held out by the defendant, she would not have impeached the aforesaid transaction.

(vii) The fraud played by the defendant was with respect to the nature of the document. In the guise of executing partition deed, she got executed a transfer deed from the plaintiff in her favour. Thus when the plaintiff signed the aforesaid document, she believed that she was signing a document which would effect partition of joint land. She never meant to execute a transfer deed.

In the light of law laid down by apex court in the case Ningawwa (supra), the document Ex DA is void ab-initio as fraud pertains to the nature of the document.

(viii) Mere registration of the document does not confer solemnity to the document that it guarantees its due execution. The due execution of a document has to be proved by leading evidence. Rather, in the instant case, S 111 of Evidence Act placed the burden of proof on the defendant to prove good faith of the



transaction as she was in active confidence of the plaintiff, which she failed to discharge. Ld. Trial court fell in error in observing that presumption of correctness is attached to a registered document without indicating the basis/ source. Under the Indian Evidence Act or any other law, there is no presumption regarding the correctness of the contents and nature of the document being presented for registration before the Registering authority.

(ix) There is no evidence that possession of the property allegedly transferred was also handing over by plaintiff to the defendant. This fact also indicates that plaintiff never intended to execute any such transfer deed.

22. The aforesaid gamut of proved facts clearly proves that the document Ex.DA is a result of fraud and the same would not confer any right, title or interest in the alleged property in favour of the defendant. Ld. Trial court overlooked all the above facts and committed grave error in returning finding on issue no. 1 & 2 against the plaintiff. Accordingly, the findings recorded by the learned trial Court on issues no.1 and 2 are hereby reversed. Both the issues are decided in favour of the plaintiff & against the defendant.

23. In view of the forgoing discussion, the appeal of the appellant is allowed with costs. The impugned judgment and decree dated 01.09.2016 of the learned trial court is hereby set aside and the suit of the plaintiff for declaration and permanent injunction is hereby allowed with costs. The transfer deed no.2897 dated 05.09.2014 is declared void abinitio and mutation no. 3448 dated 10.09.2014 sanctioned on its basis is also hereby set aside.”



12. Before this Court, learned counsel for the appellant has failed to point out as to how the findings returned by learned First Appellate Court are either illegal or perverse or based upon any mis-reading or mis-appreciation of material evidence, which may call for any interference by this Court.

13. I have gone through the judgment and decree dated 17.07.2017 passed by the learned First Appellate Court.

14. In my considered view, the findings returned by learned First Appellate Court are based upon proper appreciation of facts, pleadings as well as the evidence available on record. Learned First Appellate Court has even cogent reasons for allowing the appeal of the respondent-plaintiff. No question of law much less, a substantial question of law arises for adjudication in this regular second appeal.

15. Resultantly, the instant regular second appeal fails and the same is accordingly, dismissed.

16. All the pending application(s), if any, shall also stand closed.

21.07.2026
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(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No