

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

R.S.A.No.4264 of 2010 (O&M)

Date of Decision: September 18, 2015

Jagir Singh

...Appellant

Versus

Dano

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Padam Jain, Advocate,
for the appellant.

Mr.Sarabjit Singh, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

The challenge in the present Regular Second Appeal is to the findings rendered by both the Courts below, whereby the suit for declaration filed at the instance of the appellant-plaintiff challenging the decree dated 15.9.1995, alleged to have been obtained with fraud and concealment and as well as sale deed dated 26.9.1996 being result of fraud and misrepresentation, much less, null and void with a consequential relief of permanent injunction, has been dismissed.

Mr.Padam Jain, learned counsel appearing on behalf of the appellant-plaintiff submits that the brothers of the appellant-plaintiff, by forging his signatures, entered into an agreement to sell with respect to the

land described in the suit owned by the plaintiff in favour of none else, but respondent-defendant Dhano, who is his mother. As a result of the agreement to sell, suit for specific performance was filed by Dhano, resulting into passing of the *ex-parte* judgment and decree, aforementioned. He further submits that the appellant-plaintiff acquired the knowledge of the aforementioned decree in the year 2006 and accordingly the suit bearing No.48 dated 21.2.2006 was filed.

Counsel further submits that the possession of the property is still with the appellant-plaintiff, whereas the same is disputed by the respondent-defendant. In order to lend support to the aforementioned averments, he has examined three witnesses and the circumstances, which have been brought on record, would lead to an irresistible conclusion that a fraud, as envisaged under Order 6 Rule 4 CPC, has been played upon the appellant-plaintiff. Both the Courts below have committed an illegality and perversity in not noticing the fact that the Process Server, in previously instituted suit, had reported that service was not effected. Some Advocate had put in appearance and filed Vakalatnama and thereafter did not appear and was proceeded *ex-parte* and, therefore, a substantial question of law arises for determination by this Court. He further submits that after obtaining the aforementioned decree, the respondent-defendant filed a suit for declaration in 2005 to the effect that she is owner in possession of the land. The same was dismissed vide judgment and decree dated 23.11.2005.

Mr.Sarabjit Singh, learned counsel appearing on behalf of the respondent submits that there is no illegality and perversity in the impugned judgments and decrees of both the Courts below. The suit *ex-facie* was time

barred as the plaintiff was aware of the judgment and decree owing to the fact that both the parties to the lis are none else but son and mother (close relatives) and, thus, no substantial question of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book.

After noticing the aforementioned contentions of the learned counsel for the parties, there is no substance in the pleas raised by the learned counsel for the appellant-plaintiff and the appeal is liable to be dismissed on the following grounds:-

1) The plaintiff has failed to examine any Handwriting Expert to get his admitted signatures compared with the disputed signatures on the agreement to sell, much less, Vakalatnama purported to have been filed by an Advocate. Neither such document has been examined. The oral evidence would not prevail upon the documentary evidence. Even the record of the aforementioned civil suit has not been produced enabling the Court to arrive at a finding, other than, what has been rendered”

2) The plaintiff has failed to discharge the onus to prove the fraud and misrepresentation as envisaged under Order 6 Rule 4 CPC.

In view of what has been observed above, I do not find any merit in the appeal, much less, no substantial question of law arises.

The appeal is accordingly dismissed.

The contention of Mr.Jain that any right, accrued during the

interregnum would not affect the right of the parties to the lis, can be taken up in any other subsequent proceedings, if initiated.

September 18, 2015
ramesh

(AMIT RAWAL)
JUDGE