

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

**Regular Second Appeal No.1255 of 2011 (O&M)
Date of Decision: January 09, 2015.**

Malkit Singh

.....APPELLANT(s).

VERSUS

Savita Devi

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ranjit Singh Saini, Advocate
for the appellant (s).

Mr. Parminder Singh, Advocate for
Mr. Tushar Sharma, Advocate
for the respondent.

SURINDER GUPTA, J.

Appellant-plaintiff Malkit Singh filed suit for declaration to the effect that he is owner in possession of land measuring 8 kanals as fully described in the head-note of the plaint situated in village Pakka Kalan, Tehsil Talwandi Sabo, District Bathinda and sale deed dated 10.02.2003 executed by him in favour of respondent-defendant (his divorced wife), is illegal, null and void and further the relief of injunction to restrain her from alienating the same.

Briefly stated, the case of the plaintiff is that he was married with respondent-defendant and that marriage ended in divorce vide judgment and decree dated 10.04.2002. After passing of the decree of divorce, she got registered an FIR No.136 dated 29.09.2003 at Police Station Nabha for the offences punishable under Sections 420, 406, 494 and 498-A of Indian Penal

Code and she also made a complaint against him in his department. After obtaining the decree of divorce, appellant-plaintiff got married with Kamaljit Kaur on 21.09.2002. He along with his wife Kamaljit Kaur was arrested by Assistant Sub Inspector Jaswinder Singh on 05.10.2003. Appellant-plaintiff was pressurized at the instance of respondent-defendant and her relatives to give land measuring 8 kanals to the respondent-defendant in order to get rid of the case registered against him. On 06.10.2003, he was brought to the office of Sub Registrar and the sale deed in question was got executed in favour of respondent-defendant illegally and forcibly. The same was registered on 07.10.2003. The plea of the appellant-plaintiff was that the sale deed in question was result of fraud, misrepresentation, coercion, undue influence and without consideration and he sought setting aside of the same.

Respondent-defendant in her written statement contested and controverted the averments of the appellant-plaintiff inter-alia pleading that appellant-plaintiff is a cheater. He obtained decree of divorce dated 10.04.2002 without impleading her as party or serving her with any summons. In this manner, he defrauded her and the Court as well. It was denied that plaintiff was arrested on 05.10.2003 and he executed the sale deed under pressure or coercion.

Pleadings of the parties led to the framing of issues as follows:-

1. Whether the sale deed dated 07.10.2003 allegedly executed by plaintiff in favour of defendant is illegal, null, void and no binds effects upon the rights of plaintiff as alleged ?OPP
2. If issue No.1 is proved, whether the plaintiff is entitled to declaration as to his being owner in possession of land measuring 8 Kanals 0 Marlas ?OPP
3. Whether the plaintiff is entitled to the relief of permanent injunction ?OPP

4. Whether the suit is not maintainable in the present form ?OPD
5. Whether the suit is not properly valued for the purpose of court fees and jurisdiction ?OPD
6. Whether the plaintiff has concealed the material and true facts from the court ?OPD
7. Relief.

The suit was dismissed by Additional Civil Judge (Senior Division), Talwandi Sabo with the observations that appellant-plaintiff failed to prove that the sale deed in question is the result of fraud, misrepresentation and coercion. Not satisfied, the appellant-plaintiff filed appeal which was also dismissed by Additional District Judge, Fast Track Court, Bathinda vide judgment dated 27.11.2010. In para 25 and 26 of the judgment, the Appellate Court below observed as follows:-

“25. Though, this argument seems to be very attractive. But, it has rightly been observed by the learned lower court that the human conduct is very complex and it can't be categorized by a single theory. As to why the plaintiff has agreed to sell his property, it is best known to him alone when the coercion has not been proved on record. If there was any threat or coercion, the attesting witnesses of the sale deed could have been examined by the plaintiff. But, the better evidence has been withheld by the appellant. As to how come the sale deed being witnessed by two independent persons, to whom the plaintiff has thought of not examining before this Court. Accordingly, adverse inference in this regard has to be drawn against the appellant only.

26. Since, there is execution of the document, which has been duly registered under Section-17 of the Registration Act, 1908, there is presumption that registered document is validly executed, The registered document,

therefore, prima-facie has to be considered as valid in law. The onus was on the appellant to rebut this presumption, but the appellant has miserably failed in this regard. In this regard, this Court is fortified by the authoritative pronouncement in case titled as **Ranganayakamma & Anr. Vs. K.S. Prakash (D) by L.Rs. & Ors., reported in 2008(4) Civil Court Cases 312.**”

I have heard learned counsel for the parties and have perused the paper book and record of the Courts below with their assistance.

Admittedly, respondent-defendant was married with appellant-plaintiff who obtained ex parte divorce from her vide judgment and decree dated 10.04.2002 Ex.P4. Perusal of the judgment shows that the suit for decree of divorce was filed against Sunita Rani and not Savita Devi, respondent-defendant with whom the appellant was married. However, the effect of that decree is not a subject matter to be dealt with in this appeal.

It is admitted that an FIR was got registered by respondent-defendant against the appellant-plaintiff on the allegations of demand of dowry, fraud and conducting second marriage without taking divorce. As per the affidavit, copy of which is Ex.PW3/D, some compromise took place between the parties and the respondent-defendant had agreed to withdraw her case, got registered against the plaintiff and his wife. This affidavit is dated 22.10.2003. Under these circumstances, it appears that whatever the appellant-plaintiff had been doing was under his free will. His very contention that he was arrested on 05.10.2003 is not proved from any evidence on record. In case, he was in custody, the record of the police station concerned must have been produced by the appellant. In custody, he would not have gone to the stamp vendor for purchase of stamp papers on

which the sale deed was got executed. He had gone to a regular deed writer to get the sale deed scribed on 06.10.2003. He appeared before the Sub Registrar on 07.10.2003 to get the sale deed registered. His photograph was also taken with the Sub Registrar at the time of sale deed along with his identifier and the buyer. In these circumstances, it is not believable that he was under any pressure to get the sale deed executed, but has crafted this story afterwards, due to the reason not discussed.

While appearing as PW1, the only stress of the appellant-plaintiff is on the fact that he was arrested on 05.10.2003 by ASI Jaswinder Singh of Police Station Nabha and under pressure, the sale deed was got executed and registered from him. No witness to the sale deed has appeared to support the contention of the appellant-plaintiff. He has not even examined the scribe or any official of the office of Sub Registrar to prove that he was under custody when the sale deed was got executed.

Both the Courts on appraisal of the evidence on record, have committed no error of law or fact while reaching the conclusion that the appellant has failed to prove that the impugned sale deed is result of fraud, misrepresentation, coercion etc. calling for any interference.

No substantial question of law arises for determination in this appeal, which has no merits. Dismissed.

January 09, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE