

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

**RSA No.1765 of 2012 (O&M)
Date of decision: 07.09.2015**

Gulzari Lal

..... Appellant

versus

Amar Nath and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.Arvind Mittal, Advocate for the appellant
Mr.H.S.Dhandi, Advocate for respondent No.1

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ? **Yes***
- 2. To be referred to the Reporters or not ? **Yes***
- 3. Whether the judgment should be reported in the Digest? **Yes***

Kuldeep Singh, J. (Oral)

Impugned in the present regular second appeal is the judgment and decree dated 16.2.2012, passed by the learned Additional District Judge (Adhoc) Fast Track Court, Rupnagar, affirming the judgment and decree dated 2.8.2011, passed by the learned Additional Civil Judge, Senior Division, Anandpur Sahib, vide which, suit of the plaintiff was partly decreed and the plaintiff was declared to be joint owner / co-sharer in joint possession along with his brother defendant No.2, mother, three sisters and legal heirs of deceased sister Kishan Dei in the suit property measuring 19 kanals 5 marlas comprising of khewat No.17 khatoni No.33 khasra No.503 situated in village Dhanehra, Hadbast No.325 Tehsil Anandpur Sahib District Ropar. The sale deed dated 31.10.2001 executed by defendant No.1 in faovur of defendant No.2 was held to be illegal,

without consideration and not binding on the rights of the plaintiff and accordingly entries in the mutation were held to be illegal. Defendants were further restrained from alienating the suit property more than their share or raise any construction on specific portion without getting it partitioned and if any construction is raised by any defendant on any specific portion and in the partition proceedings that portion comes to the share of the other co-owner, he will deliver the possession of the same without claiming any compensation.

The brief facts of the case are that Bhagat Ram – defendant No.1 executed a sale deed dated 31.10.2001 in favour of his son Gulzari Lal – defendant No.2. The plaintiff, who is also son of Bhagat Ram challenged the sale deed stating that it was Joint Hindu Coparcenary property. It was purchased in the name of defendant No.1 out of the Joint Hindu Family Funds in the year 1975 on the payment of Rs.5000/- to the custodian authority payable in half yearly installments on Rs.250/- each. At that time, plaintiff was 20 years of age and defendant No.2 was 11 years of age. Plaintiff worked hard and made the land cultivable.

Upon notice, defendant Nos.1 and 2 appeared and filed joint written statement in which it was denied that the suit property is joint hindu family property or ancestral property. Defendant No.1 claimed that it is self acquired property of defendant No.1. It was stated that the sale deed was rightly executed in favour of defendant No.2. Defendant No.1 stated that he had arranged the marriage of four daughters but plaintiff never extended any help to him in these marriages, whereas defendant No.2 extended necessary assistance.

Plaintiff got false application filed from his mother Rakho under Section 125 Cr.P.C. to pressurize defendant No.1 to give suit land to him. In the said application, the defendants were ordered to pay Rs.250/- per month to Rakho vide order dated 6.3.2002.

From the pleadings following issues were framed:-

- 1. Whether plaintiff is entitled to permanent injunction as prayed for? OPP*
- 2. Whether plaintiff is entitled to permanent injunction as prayed for? OPP*
- 3. Whether the suit is not maintainable in its present form? OPD*
- 4. Whether the plaintiff has no cause of action to file the present suit? OPD*
- 5. Relief.*

Thereafter additional issue Nos.2A and 2B were also framed:-

Issue No.2-A. Whether the suit land was purchased out of the Joint Hindu Family fund earned by plaintiff and defendant No.1 and purchased in the name of defendant No.1 vide sale certificate dated 18.6.1985? OPP

Issue No.2-B Whether the sale deed dated 31.10.2001 executed by defendant No.1 is wrong, illegal, without, consideration, without legal necessity, forged and fabricated and is not binding upon the plaintiff? OPP

Issue No.1, 2A and 2B were taken up together. The lower Court held that the suit property was self acquired property of defendant No.1. However, it came to the conclusion that defendant No.2 appearing as DW2 has deposed that he paid the sale consideration after one day of the execution of the sale deed.

Therefore, the lower Court held that at the time of registration of sale

deed, nothing was paid to defendant No.1 and consequently sale deed was without consideration. It was further held that defendant No.1 himself did not appear as own witness to prove that he had received the sale consideration. Therefore, adverse inference was drawn against defendants. Consequently, issue No.1 and 2A were decided against the plaintiff, whereas issue No.2B was decided against the defendants. Consequently issue No.2 was partly decided in favour of the plaintiff. Issue No.2 and 4 were also decided against the defendants.

I have heard learned counsel for the parties and have also carefully gone through the file.

It is to be further added here that defendant No.1 Bhagat Ram defendant No.1 died during pendency of the suit and his legal heirs i.e. Widow, sons and daughters were brought on file. It is further added that the plaintiff did not file any appeal against the adverse findings recorded against him and the same have now become final.

The only question arising before this Court is as to whether the sale deed is liable to be set aside on the ground that the sale consideration was not paid at the time of execution of the sale deed and was paid on the next day?

It comes out that the relations between the plaintiff Amar Nath and his father Bhagat Ram were not cordial. In the written statement, itself, Bhagat Ram had stated that plaintiff did not extend him any help at the time of ceremonies of marriage of his four daughters, whereas defendant No.2 (appellant herein) had extended

him such help. Moreover, Bhagat Ram was aggrieved of the fact that Amar Nath plaintiff had prevailed upon his mother Rakho wife of Bhagat Ram to file an application under Section 125 Cr.P.C. against him in which he was ordered to pay maintenance vide order dated 6.3.2002. The sale deed was executed on 31.10.2001, at which time, probably relations between the plaintiff and his father had gone sour. There are few facts which escaped the notice of the lower Court. Defendant No.1 during his lifetime had filed written statement jointly with defendant No.2, admitting that he has received the sale consideration. Defendant No.1 died during pendency of the suit and was not produced as a witness for which lower Court has drawn adverse inference.

As per record, defendant No.1 had died on 19.6.2009. It also comes out that earlier, the suit was decided on 3.6.2009 against the plaintiff. Plaintiff filed an appeal bearing No.26 of 3.8.2009. In the said appeal, the case was remanded back by learned Additional District Judge, Ropar vide judgment dated 2.8.2010 for fresh decision after giving proper opportunity to both the parties to lead their respective evidence if they so desire. It goes to show that in the meanwhile, defendant No.1 was dead. Therefore, he did not get any opportunity to appear in the witness box. Therefore, no adverse inference could be drawn on account of his non-appearance. Lower Court has heavily relied upon the admission of defendant No.2 that the sale consideration was paid on the next date. This was made the basis to hold that the sale consideration was not paid on the same day.

Now assuming that it is held that sale consideration was paid on the next day the question would arise whether the sale deed on this account will become illegal and without consideration and will not pass on any title. I find reply in negative. At the first instance, the vendor who was none else than the father of the vendee as well as father of the plaintiff had admitted in the written statement that he had received sale consideration. It hardly matter if it was paid on the same day or on the next day. Since it was a matter between father and the son, therefore, father might have shown some leniency to receive the sale consideration while returning home and received the sale consideration actually on the next day. However, fact remains that sale consideration was admitted by defendant No.1 (vendor) to have been received. In these circumstances, when there are findings that the sale consideration was paid on the next day, the Hon'ble Supreme Court in Vidhyadhar v. Manikrao and another (1999) 3 Supreme Court Cases 573 observed as under:-

35. Even if the findings recorded by the High Court that the plaintiff had paid only Rs.500/- to defendant No.2 as sale consideration and the remaining amount of Rs.4,500/- which was shown to have been paid before the execution of the deed was, in fact, not paid, the sale deed would not, for that reason, become invalid on account of the provisions contained in Section 54 of the Transfer of Property Act, 1882 which provide as under:-

"54. 'Sale' is a transfer of ownership in exchange for a price paid or promised or part- paid and part-promised.

Such a transfer, in the case of tangible immoveable property of the value of one hundred rupees and

upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs; in possession of the property.

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property."

36. *The definition indicates that in order to constitute a sale, there must be a transfer of ownership from one person to another, i.e., transfer of all rights and interests in the properties which are possessed by that person are transferred by him to another person. The transferor cannot retain any part of his interest or right in that property or else it would not be a sale. The definition further says that the transfer of ownership has to be for a "price paid or promised or part-paid and part-promised". Price thus constitutes an essential ingredient of the transaction of sale. The words "price paid or promised or part-paid and part-promised" indicate that actual payment of whole of the price at the time of the execution of sale deed is not sine qua non to the completion of the sale. Even if the whole of the price is not paid but the document is executed and thereafter registered, if the property is of the value of more than Rs.100/-, the sale would be complete.*

Supreme Court further went on to observe as under:-

38. The real test is the intention of the parties. In order to constitute a "sale", the parties must intend to transfer the ownership of the property and they must also intend that the price would be paid either in praesenti or in future. The intention is to be gathered from the recital in the sale deed, the conduct of the parties and the evidence on record.

It goes to show that the intention of defendant No.1 (now deceased) was to transfer title to his son defendant No.2 which he actually did. He did receive the sale consideration may be on the same day or on the next day. Even if it is found that it was received on the next day, the sale deed will not become illegal. Both the Courts below erred in holding that the sale deed will not transfer any title to defendant No.2 (appellant).

It being so, the law point is accordingly decided that if the sale deed is executed and the vendor admitted that he has received sale consideration in that case even if sale consideration is proved to be paid the following day, the sale deed will not become illegal and without consideration and will pass on the title.

It being so, the impugned judgment and decree 16.2.2012, passed by the learned Additional District Judge (Adhoc) Fast Track Court, Rupnagar and the judgment and decree dated 2.8.2011, passed by the learned Civil Judge, Senior Division, Anandpur Sahib, are set aside and the suit filed by the plaintiff stands dismissed with costs throughout.

07.09.2015
gk

(Kuldip Singh)
Judge