

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-484-2011(O&M)

Date of decision: 22.09.2015

Ekbal

..... Appellant

Versus

Smt. Hajra

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

PRESENT: Ms. Deepali Puri, Advocate for the appellant.

Mr. Sanjay Vij, Advocate for the respondent.

AMIT RAWAL, J. (ORAL)

Challenge in the present appeal is to the concurrent findings of fact recorded by both the Courts below whereby the suit for declaration and permanent injunction filed by respondent-plaintiff seeking setting aside of the sale deed bearing Vasika No. 781 dated 06.09.2005 and mutation No. 6067 dated 09.09.2005 was decreed and the above-mentioned sale deed and mutation have been declared to be illegal, null and void.

Ms. Deepali Puri, learned counsel appearing for appellant-defendant submits that the suit at the instance of respondent-plaintiff filed in the year 2006, to challenge the aforementioned sale deed was not maintainable as the respondent-plaintiff allegedly deriving title in the suit property on the basis of a consent judgment and decree dated 31.03.1997,

which could not be taken into consideration for want of registration. She further submits that appellant-defendant was the *bona fide* purchaser of the suit land as in pursuance to the aforementioned sale deed, the property was not mutated in favour of respondent-plaintiff, for, making reasonable enquiry, it was found that Salem was in possession of the property and accordingly, the appellant-defendant purchased the property vide sale deed bearing Vasika No. 781 dated 06.09.2005. In support of her contention, she relied upon judgments rendered in (i) **Gurdev Singh Vs. Jagroop Singh, 1993 (3) RRR 454;** (ii) **Bhoop Singh Vs. Ram Singh Major and others, AIR 1996 Supreme Court 196 (1) and** (iii) **Roop Kumari Vs. Nanak Chand, 1992 (1) RRR 525.**

Mr. Sanjay Vij, learned counsel appearing for the respondent-plaintiff submits that Salem did not have a right or title in the property in pursuance to the consent judgment and decree dated 31.03.1997 and, therefore, the sale deed was *nonest* in the eyes of law. It is a well known principle that a person may tell lie but the documents speak otherwise. In support of his aforementioned submissions, he has relied upon the judgment rendered by Hon'ble Supreme Court in **State of Andhra Pradesh and others Vs. Star Bone Mill and Fertilizer Company, (2013) 9 SCC 319.** He further submitted that there is no illegality and perversity in the impugned judgment and decree, much less, no substantial question of law arises for determination by this Court.

I have heard the learned counsel for the parties, appraised the paper book and the records of the courts below and as well as the

judgments cited at bar.

I do not dispute the law laid down in the judgments cited on behalf of Ms. Deepali Puri, learned counsel appearing for appellants, but the fact remains that in terms of provisions of Section 41 of Transfer of Property Act, Salem, the vendor had no right or title in the property, vis-a-vis the contention/plea that the consented judgment and decree required to be registered would be in respect of the parties who are Hindu by religion whereas the parties to lis are Muslims and thus, governed by Custom/Muslim Law. In other words, Salem was none else, but the father of respondent-plaintiff. Therefore, on the death of Salem, the property would devolve by way of natural succession in favour of his sons, the respondent-plaintiff is deemed to have acquiesced of the title. The ratio decidendi culled out in **State of Andhra Pradesh (supra)**, is squarely applicable to the facts of the case, as Salem did not have a title in the suit property and he was aware of this fact, rather in my view he played fraud upon appellant-defendant and consequently, the appellant-defendant is also entitled to damages. Even on going through the sale deed, no sale consideration had been passed on before the Registrar, when the same was registered. At best, it can be presumed that the sale deed was without any consideration and even no witness to the sale deed has been examined, viz-a-viz during the exchange of consideration.

In view of what has been observed above, I do not find any illegality or infirmity, much less, perversity in the findings rendered by lower Appellate Court, which are based on appreciation of oral and

documentary evidence. No substantial question of law arises for determination by this Court.

Accordingly, the appeal is dismissed.

September 22, 2015
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(AMIT RAWAL)
JUDGE