

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.898 of 2012 (O&M)
Date of Decision: July 22, 2015

Inderjeet and others

...Appellants

Versus

Azad and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.A.Sheoran, Advocate
 for the appellants.

INDERJIT SINGH, J.

Appellants-defendants Inderjeet and others have filed this regular second appeal against respondents-plaintiffs Azad and others and proforma respondents, challenging the impugned judgment and decree dated 30.07.2011 passed by learned Addl. Civil Judge (Senior Division) Loharu, vide which the suit filed by the plaintiffs-respondents for possession and permanent injunction was decreed and also the judgment and decree dated 22.11.2011 passed by learned Addl. District Judge, Bhiwani, vide which the appeal filed by the appellants-defendants was dismissed.

The brief facts of the case are that plaintiffs-respondents Azad and others filed a suit against appellants-defendants Inderjeet and others and proforma defendants, for possession and permanent injunction. It is the case of the plaintiffs that earlier defendants No.1

to 4 were owners in possession of house in dispute along with tubewell, electricity connection and agricultural land measuring 69 kanals 6 marlas falling in village Dhani Ahmad and they have sold the suit land along with house, tubewell and electricity connection to the plaintiffs and proforma respondents vide sale deed No.625 dated 13.07.2007 and received the total sale consideration. Possession of the same was also delivered. After the execution of the sale deed, the defendants made request to allow them to use the property and occupation till the time an alternative arrangement of the defendants is made and they will vacate the suit property after an alternate arrangement is made. The plaintiffs and proforma respondents allowed them to reside in the house in dispute for some time. The possession of the defendant of house in dispute is permissible one. It is further the case of the plaintiffs that now the defendants are not vacating the house in dispute and are adamant to cause loss.

On the other hand, the case of defendants in the written statement is that they are owner in possession of the suit land measuring 69 kanals 6 marlas along with constructed house etc. The defendants agreed to sell their land in favour of one Naveen Kumar vide agreement to sell dated 29.06.2007 for sale consideration of ₹6,50,000/- per acre and ₹10,00,000/- was also received as earnest money. The date of the registration of sale deed was fixed as 10.07.2007 but Naveen Kumar could not arrange the sale consideration, therefore, he along with plaintiff No.1 came to defendants and requested that he has no arrangement of sale

consideration. Upon this, the defendants agreed to cancel the agreement to sell. However, there was a connivance between Naveen Kumar and plaintiff No.1, who in the garb of execution of a cancellation of agreement, got executed the sale deed illegally in favour of the plaintiffs and proforma respondents and mutation was also got sanctioned. It is further the case of the defendants that alleged sale deed dated 13.07.2007 is result of fraud, misrepresentation and not binding upon the rights of the defendants.

By way of counter claim, the answering defendants repeated their claim of ownership and execution of agreement to sell with one Naveen Kumar and thereafter, cancellation of the same with mutual consent of the parties to said agreement.

After framing the issues and after giving opportunity to the parties to lead evidence, learned Addl. Civil Judge (Senior Division) Loharu, decreed the suit of the plaintiffs. Aggrieved from the above-said judgment and decree, appellants-defendants filed appeal and learned Addl. District Judge, Bhiwani, dismissed the appeal vide judgment and decree dated 22.11.2011.

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by the appellants-defendants.

At the time of arguments, learned counsel for the appellants argued that the findings given by the Courts below are not as per law and evidence and are perverse and liable to be set aside.

I have heard learned counsel for the appellants and have

gone through the record.

From the record, I find that the sale deed has been executed by defendants and it is a registered document. In no way fraud can be played upon so many persons. It would look natural that there is one illiterate person and that document has been got executed but when the document is executed by 4-5 persons, then it is not possible that all of them were not knowing the nature of the document. The Courts have discussed the evidence in minute detail. The witness DW-1 Inderjit stated that he does not remember if his photographs were taken in Tehsil office, which is mandatory requirement prior to the execution of a sale deed. The Courts also held that the format of the sale deed and cancellation of document is totally different. The sale deed is a registered document and before registration, the Sub Registrar reads over the contents of document to the parties and only then he registers the document. Otherwise also, onus to prove fraud is on the defendants and there is no cogent evidence to prove the same.

The findings of fact given by the Courts below are correct, as per law and evidence. Nothing has been pointed out as to which evidence has been misread by the Courts below and how the judgments and decrees are perverse. The judgments and decrees passed by the Courts below are correct, as per law and evidence and do not require any interference from this Court and the same are upheld. No substantial question of law arises in this regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

July 22, 2015
Vgulati

(INDERJIT SINGH)
JUDGE