

In the High Court of Punjab and Haryana at Chandigarh.

**SAO No. 21 of 2012 (O&M)
Decided on 02.02.2015**

Bhagwanti and another

--Appellant

Vs.

Purshotam and another

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Whether Reporters of Local Newspapers may be allowed to see the judgment ?

To be referred to Reporters or not ?

Whether judgment should be reported in the Digest ?

Present: Mr. P.S Jammu, Advocate, for the appellant
Mr.Manish Soni, Advocate, for the applicants/ respondents

Rakesh Kumar Jain,J: (Oral)

CM No. 28500-CII of 2014

CM is allowed and document Annexure P-1 is taken on record.

SAO No. 21 of 2012

This appeal is against the order dated 21.2.2012 by which judgment and decree of the trial Court passed in favour of the appellants has been set aside and the case has been remanded to the trial Court.

In brief, the appellants filed a suit for declaration that the appellants and one Parmeshwari, were joint owners in respect of land

measuring 53 kanals 13 marlas, out of total land measuring 550 kanals 18 marlas and the oral exchange bearing No. 5355 effected on 23.10.2000 on the basis of alleged rapat No.355 dated 8.7.2000, is wrong, illegal, null and void.

Learned counsel for the appellants has submitted that by virtue of the said exchange, 6 kanals of land was allegedly given to the appellants in exchange of 53 kanals 13 marlas. The suit was decreed on 28.10.2010 by the trial Court. The judgment and decree of the trial Court was assailed by the defendants by way of first appeal and it was brought to the notice of the Appellate Court that said 6 kanals of land which was the subject matter of oral exchange was further sold by the present appellants to one Smt. Kesar wife of Inder Ram, for a consideration of ₹34,000/-, whereas said Smt. Kesar has not been impleaded as a necessary party.

The Appellate Court has set aside the judgment and decree of the trial Court on the ground that if the oral exchange is set aside on the ground of fraud, then the sale deed dated 09.5.2001 (Ex.D1) in favour of Smt.Kesar would also become redundant in her absence. Thus, the judgment and decree of the trial Court was set aside and the case was remanded back to decide the suit afresh.

Learned counsel for the appellants has argued that the appellate Court has committed an error of law in remanding the case to the trial Court as the sale deed alleged to have been executed by them in favour of Smt.Kesar is only a paper transaction.

On the other hand, learned counsel for the respondents has submitted that the question as to whether the sale deed Ex. D1 is merely

a paper transaction or the property in dispute was actually sold by the appellants to Smt.Kesar, is a question of law which can only be decided in the presence of Smt.Kesar and since she is not impleaded as necessary party, the Appellate Court has set aside the judgment and decree and remanded the case back to the trial Court for deciding the suit afresh.

I have heard learned counsel for the parties and after examining the record, am of the considered opinion that there is no error in the order of the Court below because the Appellants have challenged the oral exchange by which 53 kanals and 13 marlas of land was exchanged with 6 kanals of land of the defendants on the ground of fraud but at the same time, the defendants have claimed that the said oral exchange has been acted upon by the appellants as they have further sold the said land, as owners, to Smt. Kesar vide sale deed Ex.D1. Therefore, she is the necessary party to be present before the Court to support the document and the appellants have no right to say that the oral exchange was a fraudulent transaction.

In view thereof, the question as to whether the sale deed Ex.D1 was the same sale deed executed in favour of Smt.Kesar, can be decided only in her presence when she would enter into the witness box to support the sale deed in her favour.

In view of the above, the present appeal is found to be without any merit and the same is hereby dismissed.

02.02.2015
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(Rakesh Kumar Jain)
Judge