

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

RSA No.1187 of 2013 (O&M).
Date of Decision: 20.11.2015.

Kavita and others

....Appellants.

VERSUS

Sardari Lal Khosla and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. V.K. Malhotra, Advocate for the appellants.

SNEH PRASHAR, J.

1. This was Regular Second Appeal filed by appellants Kavita and others (hereinafter referred to as the “appellants”) impugning the judgment and decree dated 13.09.2010 passed in Civil Suit No.607 of 2000 by learned Civil Judge (Junior Division), Ajnala, partly decreeing the suit for permanent injunction filed by plaintiff Subhash Chander (father of the appellants No.2 to 5 and husband of appellant No.1) against respondents-defendants Sardari Lal and another (hereinafter referred to as the “defendants”), which was upheld by the first appellate Court vide judgment

and decree dated 23.11.2012.

2. The facts which emerge from the record are as under:-

A suit was filed by Subhash Chander (since deceased and being represented by appellants legal heirs) praying for permanent injunctive order restraining the respondents from dispossessing or interfering into his peaceful and lawful possession over the residential house constructed on the land measuring 73 square yards, situated within the Lal Lakir of village Ramdas, Tehsil Ajnala, District Amritsar (hereinafter referred to as the "house"). He claimed to be owner in possession of the house as he had purchased the same from Gurmej Kaur vide agreement of sale dated 22.01.1998. He further submitted that the respondents are carrying on business of commission agent and money lending at Ramdas and have links with anti social elements. Their house is adjacent to his house and they are hurling threats to dispossess him forcibly and illegally.

The plaintiff added that he had never executed any sale deed and also never appeared before a Deed Writer for getting scribed the sale deed and also never appeared before the Sub Registrar for the purpose of registration of the sale deed. Neither any consideration amount was paid to him nor he delivered the possession. He assailed the sale deed as illegal, null, void and fabricated document having no binding effect on his rights.

3. The defendants-respondents contested the suit. They denied the plaintiff Subhash Chander to be owner of the house. According to them, the plaintiff had sold the house to Sardari Lal (defendant No.1) vide registered sale deed dated 13.09.2000. After execution of the sale deed, he accordingly

delivered the possession of the house to Sardari Lal and thereafter he (plaintiff) was inducted as tenant and he accordingly executed a rent note in favour of the owner in that regard. Denying all other averments of the plaintiff, the defendants submitted that the plaintiff is in possession of the house as a tenant under defendant Sardari Lal.

4. On the rival contentions of the parties, following issues were framed:-

- (1) Whether the sale deed dated 13.9.2000 is illegal, null and void and result of fraud and mis-representation? OPP.
- (2) Whether plaintiff is owner in possession of the suit property? OPP.
- (3) Whether plaintiff is entitled to declaration as prayed for? OPP.
- (4) Whether plaintiff is entitled for injunction as prayed for? OPP.
- (5) Whether plaintiff is in possession of the suit property as a tenant under defendant no.1? OPD.
- (6) Whether suit is not maintainable in the present form? OPD.
- (7) Whether plaintiff has no cause of action to file the suit? OPD.
- (8) Whether suit has been properly valued for the purpose of court fee? OPP.
- (9) Relief.

5. Both the parties adduced evidence in support of their rival contentions.

6. Considering the ocular and documentary evidence produced by the parties and the submissions made on their behalf, learned trial Court

partly decreed the suit of the plaintiff-Subhash Chander finding him in possession of the house and directing the defendants to take possession in due process of law.

7. Appellants preferred an appeal against the judgment and decree dated 13.09.2010 passed by learned trial Court which was dismissed by learned Additional District Judge, Amritsar vide judgment and decree dated 23.11.2012.

8. Feeling aggrieved, the appellants have filed the instant Regular Second Appeal.

9. The submissions made by Mr. G.S. Bawa, learned counsel representing the appellants have been considered.

10. Learned counsel for the appellants argued that as per the stand taken by the defendants, plaintiff-Subhash Chander had sold the house to defendant Sardari Lal by virtue of sale deed dated 13.09.2000 Ex.D1 and that amounted to an admission by them that plaintiff-Subhash Chander is the owner of the house. The plea of sale of the house by the plaintiff them was based on the sale deed Ex.D1 which the plaintiff pleaded was without consideration. No substantive and reliable evidence could be produced by the defendants to prove the payment of sale consideration amount to the plaintiff. The scribe of the sale deed DW1 Manoj Kumar, Deed Writer admitted during his cross-examination that the sale consideration was not paid by the vendee to the vendor in his presence whereas defendant Sardari Lal stated that the money was paid in the presence of deed writer Manoj Kumar. Apart from that, learned counsel contended that the plaintiff during

his statement categorically stated that the sale deed Ex.D1, was an outcome of fraud and was a forged and fabricated document.

11. There appears no merit in the argument of learned counsel for the appellants. The sale deed Ex.D1 is a registered document. In addition to DW1 Manoj Kumar, scribe of the sale deed Ex.D1 who testified that he had scribed the sale deed at the instance of the plaintiff and after admitting and accepting its contents to be correct he had signed in his presence, defendants examined DW3 Raj Karan Singh, Marginal Witness, DW4/DW5 Sukhjinder Singh, Registration Clerk of the Office of Sub Registrar, Ajnala who proved execution of the sale deed by the plaintiff-Subhash Chander in favour of Sardari Lal. The plaintiff alleged that the sale deed was based on fraud but what to say of adducing substantive and reliable evidence to prove the fraud even the particulars of fraud were not pleaded or deposed by the plaintiff. In absence of the same, his plea of fraud was rightly rejected. Otherwise also, the plaintiff did not opt to and get his signatures on the sale deed Ex.D1 compared with his admitted/specimen signatures and he failed to prove the sale deed to be forged or fabricated. The first appellate Court rightly held that when the registered sale deed is proved to be a correct and bonafide document, it had to be accepted that it was executed by the plaintiff after having received the sale consideration amount as per recital in the same.

12. There is not just the sale deed Ex.D1 which proves sale of the house by the plaintiff to defendant Sardari Lal. In addition to the sale deed, the defendants proved that plaintiff-Subhash Chander also executed a rent

deed Ex.D2 in favour of defendant Sardari Lal after he delivered possession of the house to the said defendant in lieu of transaction of sale. For proving execution of the rent deed, defendant Sardari Lal besides himself appearing in the witness box examined DW2 Karan Singh and DW5/DW6 Satnam Singh.

13. Be that as it may, since execution of the sale deed Ex.D1 by the plaintiff, in favour of defendant Sardari Lal was held to be proved, learned trial Court as well as learned first appellate Court rightly declined the relief of declaration of ownership claimed by the plaintiff, but allowed the relief of permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiff except in due course of law and accordingly the suit of the plaintiff was partly decreed.

Thus, finding no merit in the appeal, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

20.11.2015
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