

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

RSA No.2429 of 2013 (O&M)

Date of decision: 03.08.2015

Joginder Kaur

.....Appellant

Versus

Bimla Devi

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. A.S. Bhatti, Advocate,
for the appellant.

Ritu Bahri, J.

CM No.6629-C of 2013

For the reasons mentioned in the application, same is allowed and delay of 62 days in filing of the appeal is condoned.

RSA No.2429 of 2013

Plaintiff-appellant has come up in regular second appeal against the judgments of concurrent findings of facts dated 16.05.2012 and 29.11.2012 passed by the Additional Civil Judge (Senior Division), Rupnagar and the Additional District Judge, Fast Track Court, Rupnagar respectively, whereby her suit for declaration and permanent injunction has been dismissed.

Joginder Kaur-plaintiff (appellant herein) filed a suit for declaration to the effect that she is owner in possession of the suit land, as detailed in the head note of the plaint. Her sister-in-law, Bimla Devi-defendant (respondent), by committing a fraud upon her, got executed the

alleged sale deed dated 09.11.2006 without making payment of sale

consideration thereof. As per plaintiff, she was brought to the Court Complex by defendant-respondent and her husband on the pretext of signing/executing some documents, which were to be produced in a case. The alleged sale deed was the result of fraud and misrepresentation. The plaintiff was illiterate lady and the alleged sale deed was never executed by her. She had constructed a *chhappar* in the suit land, which was being used for storing the wooden material. This fact was well within the knowledge of the defendant, but she is threatening to dispossess the plaintiff from the suit property.

Upon notice, defendant-respondent appeared and filed written statement taking preliminary objections with regard to maintainability, jurisdiction etc. On merits, it was stated that the defendant was married to Maghar Singh alias Maghar Ram about 40 years back and was residing with him along with her children in village Thikariwal, District Fatehgarh. The plaintiff had sold the suit property to her for a sum of Rs.60,000/- vide sale deed dated 09.11.2006. Since then, she was owner in possession of the suit property. She had raised tin-shed and *chhappar* in the suit property. Entire sale consideration had been paid before attestation of the sale deed. No fraud was played upon the plaintiff. All other allegations levelled by the plaintiff were denied and a prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the sale deed dated 09.11.2006 is a forged and fabricated document? OPP
2. If issue No.1 is proved in affirmative, whether the plaintiff is in possession of the suit property and therefore, is entitled to declaration prayed for? OPP

3. Whether the suit is not maintainable in the present form? OPD
4. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPD
5. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. On appeal, the lower appellate Court affirmed the findings of the trial Court. Hence, this appeal.

The execution of the sale deed dated 09.11.2006 executed by plaintiff-appellant in favour of Bimla Devi-defendant had been duly proved by Gauri Shankar (DW-2). Birjesh Kumar, Advocate (DW-3) clearly stated that he had scribed the sale deed dated 09.11.2006 (Ex.D1) at the instance of Joginder Kaur daughter of Labh Singh in favour of Bimla Devi for sale consideration of Rs.60,000/-. The plaintiff had received the entire sale consideration at her home. She put her thumb impressions on the sale deed in his presence and in the presence of other witnesses. As per deposition of Jaswant Singh, Registry Clerk (DW-1), the property in question was vacant plot and Bimla Devi came in possession of the said property at the time of sale deed in question. Joginder Kaur-plaintiff had admitted before the Sub Registrar that she had already received the entire sale consideration.

Since the sale deed dated 09.11.2006 was a registered document, therefore, there was a presumption that it was a genuine document. Plaintiff-appellant did not lead any evidence to prove the alleged fraud committed upon her. A solitary statement was not sufficient to prove the allegation of fraud. Execution of the sale deed dated 09.11.2006 (Ex.D1) was duly proved by the defendant-respondent by examining aforesaid witnesses. The plaintiff-appellant did not deny her thumb impression on the sale deed. She did not examine any handwriting and fingerprints expert to

prove that the sale deed does not bear her thumb impression. Even though, she denied the photograph(s) on the sale deed, but she did not make any complaint to the police against the defendant-respondent or any of the witnesses in that regard. The only objection of the plaintiff before the Executive Magistrate was that Bimla Devi-defendant had not made full sale consideration. Hence, her plea that the sale deed in question was the result of misrepresentation and undue influence was rejected.

After going through the impugned judgments, this Court is of the view that the sale deed in question has been duly proved by the defendant-respondent by leading cogent and convincing evidence. Accordingly, suit of the plaintiff-appellant has been rightly dismissed by both the Courts below after appreciating the evidence in the right perspective. No illegality, much less perversity, has been found in the impugned judgments, warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

03.08.2015
ajp

(RITU BAHRI)
JUDGE