

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

**RSA No. 4660 of 2013(O&M)
Date of decision : August 31, 2015**

Om Parkash and others

..... Appellants

Versus

Smt. Kamlesh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:-

Mr. S. S. Nara, Advocate
for the appellants.

None for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The case has been called up in second round. No one has put in appearance on behalf of respondents despite the name has been displayed on the display board.

Even on the last date of hearing there was no representation on behalf of the respondents.

The appellants-defendants has challenged the impugned judgment and decree of both the courts below whereby the suit filed by the respondents-plaintiffs for declaration declaring the Will dated 14.11.2003 executed by Ram Sarup in favour of appellants-defendant Nos. 1 to 3 as illegal, null and void has been

decreed and the plaintiffs along with defendant Nos. 4 and 5 have been declared as joint owners.

Mr. S. S. Nara, learned counsel appearing on behalf of the appellants-defendants submits that the sale deed in respect of land measuring 39 Kanals 11 Marlas executed by Ram Sarup father of respondents-plaintiffs in favour of defendant Nos. 1 to 3 for valuable consideration of ₹7,21,000/- was registered and executed. Ram Sarup died few days after the sale deed and the suit, at the instance of the respondents-plaintiffs, was filed on 2.4.2004 on the ground that the sale deed executed by Ram sarup in favour of the appellants-defendants was the result of fraud and misrepresentation, much less it was without any consideration. He further submits that in order to prove the fraud and misrepresentation, the ingredients of Order 6 Rule 4 CPC have to be established. But no such evidence had been lead. Both the courts below have committed illegality and perversity in recording the finding against the appellants-defendants.

He submits that the following substantial questions of law arise for adjudication by this court in the present appeal.

“ i). Whether the learned trial court has returned the findings regarding non-payment of consideration money of sale deed dated 5.11.2003 i.e. Ex.DW4/2 without there being any specific pleading, issue and evidence and whether the learned civil court travelled beyond pleadings?

ii) Whether the respondent No.1 who is stranger to the sale deed Ex.DW4/2 could have challenged

the same on the ground of fraud, misrepresentation and undue influence upon the vendee who is dead?

iii) Whether the evidence Ex.PW4/1 and PW4/2 i.e. account statements which have been made basis by the learned trial court while concluding that the sale deed Ex.DW4/2 is without consideration, have rightly been admitted as evidence and considered by the learned trial court despite that the objection to their admissibility was taken by the counsel for the defendants/appellants because of the fact that PW4 has deposed before the Court that the same have not been signed by him and neither he compared the same with the original and nor on the same are certified to be true copy?

I have heard learned counsel for the appellants-defendants and appraised the paper book and impugned judgment and decrees.

Order 6 Rule 4 CPC leaves no manner of doubt that to prove averments of fraud and misrepresentation there has to be specific pleadings but in plaint there is no averment much less any evidence has been lead except two bank drafts. Though a faint attempt has been made on record vide Ex. DW-4/1 and DW4/2. The statements were not accompanied by certificate under Section 65-B

of the Indian Evidence Act, 1872 and Section 2-A of the Bankers books Evidence Act, 1891. Therefore, in my view, the aforementioned statements were not admissible in evidence. Out of sale consideration of ₹7,21,000/-, the appellant stated to have made payment of ₹5,21,000/- in cash and ₹2 lacs by banker's cheque. The cheque was issued by commission agent of the appellants-defendants and the court erroneously, in my view, found that the same has not been encashed, therefore, the sale deed was without consideration. It is prerogative of the vendor to present and encash the cheque but the fact remains that the sale, as per Section 54 of the Transfer of Property Act, 1882, was complete. DW-8, Registrar, before whom the sale deed aforementioned has been executed, had appeared as a witness and stated that the sale deed was registered in the presence of the vendor and vendee, after verifying the contents of the sale deed, which included the element of consideration.

There is another aspect of the matter, mother of the plaintiff Smt. Krishna Devi had also appeared as DW-1 and has not supported their version. She has, unequivocally deposed that the consideration amount as mentioned in the sale deed was paid to the deceased Ram Sarup.

In view of such evidence, there was no occasion for the courts below to decree the suit. In my view, both the courts below have committed illegality and perversity in rendering the impugned judgment and decree, against the appellants-defendants.

In view of what has been observed above, the

substantial question of law noticed above are answered in favour of the appellants-defendants and against the respondents-plaintiffs.

The impugned judgments and decrees are set aside and the appeal is accordingly allowed.

(AMIT RAWAL)
JUDGE

August 31, 2015
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