

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1617 of 2015 (O&M)
Date of Decision.04.12.2015

Narinder Kaur

.....Appellant

Vs.

Jagir Singh and others

.....Respondents

Present: Mr. B.S. Sra, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. The plaintiff filed the suit contending that the defendant had been only a tenant under him but he claims to have purchased the property from him on 13.11.1985. The suit was, therefore, for a declaration that the sale deed dated 13.11.1985 was a forged and fabricated document and that the document was required to be set aside. The defendant contended that the document was true and it had been executed duly by him for a valuable consideration.

2. After institution of the suit the defendant had died and the wife had been defending the suit. At the trial, in a situation where the plaintiff was denying that he had ever executed the document and would state that the document was a forgery, the defendant made no attempt to produce the original sale deed but was content with filing a certified copy of the document and sought to prove the sale deed by summoning the original register from the Registrar's office to say that

the document was registered on that date. He also examined a scribe who gave evidence to the effect that he had executed the sale deed. But none of the witnesses who had reported to have signed the document as such were examined.

3. Both the Courts below held that the defendant had not established that the sale deed had been true. The defendant had made reliance on the fact that pursuant to the sale, there had been a mutation effected in respect of the municipal entry in his name and therefore, the sale deed must be taken as proved. When the suit was instituted on 14.09.1996 contending that the sale deed was not true, the mere mutation effected between the date of sale and the date of institution of suit cannot be in any sense a proof of the sale deed itself. The defendant did not give any evidence about proof of loss of original or any of the justifiable circumstance as set out under Section 65 of the Indian Evidence Act for reception of secondary evidence. Finding that even the witnesses had not been examined, the trial Court held that the requirements of Section 68 had not been established.

4. I have no difficulty in accepting the contention that Section 68 of the Evidence Act itself could not be invoked in a situation where a sale deed did not require attestation. I would only state that an inartistic expression had been used by the Courts below but the fundamental issue is whether the defendant was able to prove the sale deed by examining persons who were connected to the document. The most intimate person who would know first hand that there has been an execution of the sale deed by the plaintiffs ought to be the witnesses themselves. The scribe is but a person who carries out the intention of

either the vendor or the vendee cannot himself prove the execution. In this case most significantly, the defendant who was setting up a sale deed and trying to fend off an action for forgery had not filed the original sale deed which was most crucial. The defendant had surely something to hide and if even the original was not filed, I will not find any fault with the decisions of the Courts below that the sale deed had not been established.

5. The counsel argues that the plaintiff had initially filed an action for ejectment as though he was a tenant and the rent control action was also dismissed in the year 2008. The Rent Controller could have no right to decide on title to the property or the validity of the sale and Civil Court in the appropriately instituted suit alone can decide on the validity of transaction of sale. That was precisely the point that was taken before the trial Court that the defendant had not established the sale deed, the burden of proof of which was surely only on him.

6. The decisions of both the Courts below granting a decree in favour of the plaintiff were perfectly justified and I find no reason to interfere with the same. The second appeal is without merit and it is dismissed.

(K. KANNAN)
JUDGE

December 07, 2015
Pankaj*