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

**Regular Second Appeal No.3040 of 2015 (O&M)**
Date of decision:17.11.2015

Surat Singh (now deceased) represented by Smt. Gurmeet Kaur
.... Appellant

versus

Rajesh Chawla and others ... Respondents

**CORAM: HON'BLE MR. JUSTICE K. KANNAN**

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Present: Mr.Kawalpreet Singh Virk, Advocate,
for the appellant.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

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***K.Kannan, J.***

1. The legal representative of the deceased plaintiff, who prosecuted the suit after his death after institution, is the appellant before this court. The suit was for a declaration of title to the suit property which comprised of several items and for further relief that the deed of sale said to have been executed by the plaintiff in favour of the 1st defendant on 20.02.2006 was void ab initio and not binding on him. The plaintiff's contention was that since he was residing far away from the suit property, he had come to the village to execute the power of attorney in favour of his father who was cited as a 2nd defendant in suit. At that time, the father colluded with

the 1st defendant and purported to have used the occasion to obtain the sale deed from the plaintiff. He had never executed any such sale deed and that it was brought about by fraud. The plaintiff came to know about the fraud only when the 1st defendant was attempting to interfere with the cultivation of the plaintiff's property. The suit was, therefore, filed to secure the relief of declaration and injunction. The 1st defendant had, during the pendency of suit, transferred half share of the property and, therefore, the subsequent purchaser was also impleaded as a 3rd defendant. The sale was hit by lis pendens.

2. The 2nd defendant-father remained ex parte. The defendants 1 and 3 entered contest and contended that the plaintiff had actually entered into an agreement of sale with the wife of the 1st defendant on 10.02.2006 for sale and at that time, there had been already a mortgage in favour of the bank. The sale was made only favour of 1st defendant and before the execution of the sale deed, the amount due under the mortgage was ascertained and ₹ 66,500/- had been paid to the bank by the 1st defendant and No Objection Certificate was taken from the bank. The defendants would contend that although the consideration was ₹10,40,000/-, the document was written only for ₹1,96,000/- as per the 'circle rate'. The 1st defendant, however, transferred ₹8,10,000/- to the plaintiff's bank account and the contesting defendants produced at the time of trial proof of the amount which was transferred from his bank account to the plaintiff's account. The defendants would explain the total

consideration as comprising of ₹8,10,000/- transferred by bank account, ₹163,500/- paid under the agreement dated 10.02.2006 and ₹66,500/- as the amount paid to the bank in respect of which a No Objection Certificate was received from the Cooperative Bank. The defendants also relied on the fact that the plaintiff had actually given an affidavit stating that he had no objection for mutation in favour of 1st defendant and also given a special power of attorney in favour of 3rd defendant's husband for carrying out mutations before the revenue authorities.

3. The trial court found that the plea of sale as invalid was not even supported by enough pleadings. If the plaintiff was setting up a case as fraud, he was bound to set aside the sale and pay ad valorem court fee. The frame of the suit itself was found by the trial court to be improper. The court also found that there had been convincing evidence with reference to sale deed, consideration had been duly explained by the defendants and the suit had been laid on false and untenable grounds referring to the transactions of sale by the 1st defendant in favour of the 3rd defendant as invalid. The court found that a transaction which is lis pendens will not make it invalid but will only make transaction subject to the decision regarding the character of the sale by the plaintiff to the 1st defendant and if it were to be upheld for lack of proof of any vitiating circumstances, then the sale by the 1st defendant, in turn, could not be assailed.

4. I find the disposal of the suit by the trial court and affirmed by the appellate court was under justifiable circumstances. A sale by the plaintiff to the 1st defendant without even praying to set aside the sale if the sale were to be contended to be brought about by fraud was not competent. The plaintiff had to explain how a credit entry of ₹8,10,000/- had been made in the bank account of the plaintiff and how the agreement dated 10.02.2006 stood discharged if the plaintiff had not at any time contracted for sale of the property. The plaintiff was coming with a false case and the suit was correctly dismissed. I find no error in the judgments of the courts below for intervention in second appeal. Second appeal is dismissed as without merits.

**(K.KANNAN)**
**JUDGE**

17.11.2015
sanjeev