

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

RSA No.3154 of 2015 (O&M)
Date of Decision.12.10.2015

Manphool son of Ganesha

.....Appellant

Versus

Suman d/o Manphool and another

.....Respondents

Present: Mr. S.K. Verma, 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.

C.M. No.7565-C of 2015

For the reasons stated in the application, delay of 62 days in making good the deficiency of court fee is condoned and permission to make good the deficiency of court fee is granted.

Application is allowed.

RSA No.3154 of 2015

1. The plaintiff filed the suit to declare that the sale deed executed by him in favour of the defendant was brought about by fraud and coercion and for setting aside the sale. The contesting 1st defendant was the daughter-in-law of the plaintiff. The plaintiff's contention was that the 1st defendant's husband and the plaintiff's son died on 11.12.2007. He had consumed pesticide and that was the cause for his death. However, there was an imputation wrongly cast against the plaintiff that he was responsible for the death and that the 1st

defendant and her parents infusing fear in the mind of the plaintiff that they would implicate him for murder of the 1st defendant's husband got a sale deed executed in her favour. The very fact that the document was written when the dead body was still at home and the body was permitted to be taken away only after the document was written, would show that the document was vitiated.

2. The defendant's contention was that the plaintiff had borrowed money from her husband for the purpose of medical expenses of the plaintiff's daughter. There was an oral agreement to sell the property to her husband some time on 29.11.2007. The plaintiff after agreeing to sell the property had hatched a plan to defeat the right of the son and had murdered him. In an immediate panchayat that was convened after the death of the defendant's husband, it was agreed that he will settle the claim of the defendant by transferring the property in her favour in consideration of the money received from the defendant's husband. Accordingly, the sale deed was executed. The plaintiff willingly executed the document and there was no fraud or coercion practiced on him.

3. The trial Court accepted the contention of the plaintiff and granted the decree in favour of the plaintiff. In appeal by the 1st defendant, the decision of the trial Court was set aside and the appeal was allowed. The Appellate Court has given the following reasons as to why the trial Court judgment could not be accepted: (i) The witnesses to the sale deed were actually persons belonging to the plaintiff's village itself and one of them was a Nambardar. They had spoken about the consideration and the circumstances as pleaded by the defendant for

execution of the sale deed; (ii) The plaintiff had himself gone to the Tehsildar's office and the scribe had brought the register which showed that the plaintiff had willingly conceded to the execution of the document; (iii) The plaintiff had actually set up his daughter Sumitra to file a case against the plaintiff claiming the property to be ancestral in character and that the sale executed by the father was not valid. The plaintiff had filed the written statement contending that he had actually parted only with the property which his son was entitled to. The suit by the daughter was dismissed. At the trial, it was brought out that the daughter herself was responsible for the suit to be instituted. The daughter was seen standing outside the Court when the plaintiff was examined. The suggestion was that the daughter was truly instrumental in the father instituting the suit; (iv) The possession of the property had actually been handed over to the defendant and the plaintiff himself had admitted that the property was actually in the possession of the defendant.

4. The Appellate Court had, therefore, good reasons to reverse the decision on factual consideration of how the property had actually passed into the hands of the defendant. The Court also made observation about the fact that the suit was not immediately after the execution of the sale or any time soon thereafter. The document had been executed and registered on 12.12.2007 and the suit had been instituted only in April 2009 and later registered as a suit on 13.09.2011. The Court reasoned that if there had been any coercion practiced, it would have been possible for the plaintiff to immediately institute the suit or give a complaint to the police as regards the fraud practiced on

the plaintiff.

5. The grounds of appeal would reveal that the most important factor that the document was written even when the plaintiff's son's dead body was there was a clear indicator to the fact that there was a fraud practiced. I would take the instance to be truly serious but such a serious occasion gave place to a document which has been properly explained. It was surely an incident where the plaintiff could have been facing an apprehension that he will be prosecuted criminally. If he was trying to purchase peace with his own daughter-in-law and wanted to assure to himself that he was not implicated and he had brought about a transaction of sale, I cannot find this to be vitiated in any way. A transfer of the property to prevent a prosecution of the case and for consideration already passed between the plaintiff and the defendant's husband would surely support the transaction of sale in favour of the defendant. The subsequent conduct soon after the sale also revealed that after the transaction went through, the plaintiff was prepared to stand by the same. It was only after his daughter filed the suit and lost her case, he had again filed the suit. The Appellate Court has considered all the relevant facts and I do not think that there is any error in the appreciation of facts and law.

6. I do not find anything substantial on a point of law for consideration in favour of the plaintiff. The second appeal is dismissed.

(K. KANNAN)
JUDGE

October 12, 2015
Pankaj*