

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

RSA No.3642 of 2015 (O&M)

Date of decision : 04.08.2015

Sheela Devi

...Appellant

versus

Kesri (since deceased) through her LR

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Manjeet Singh Dhillon, Advocate for the appellant.

RITU BAHRI, J (Oral)

The appellant/defendant has come up in regular second appeal against the judgment of reversal passed by the lower appellate Court dated 16.05.2015 whereby the suit of the respondent/plaintiff has been decreed and the order dated 11.09.2012 passed by the trial Court, vide which the suit of the plaintiff was dismissed, has been set aside.

The plaintiff is an 80 years old lady whose husband died about 20 years back. The plaintiff was drawing pension and her daughter used to accompany her to the treasury office. The defendant was residing in the neighbourhood and she has cordial relations with them. In August, 2000, when the daughter of the plaintiff was away from the house, the plaintiff requested the defendant to help her to go to the treasury office for drawing pension. The defendant alongwith her husband Janak Raj accompanied her to treasury office. The

defendant and her husband in connivance with each other and in order to cheat, defraud and grab the property of the plaintiff, told her that they can help her for enhancement of her pension. She accompanied them to tehsil office in order to execute the forms for pension enhancement. In the office of Sub Registrar, Jalandhar, they got executed and registered the sale deed of the property in question by obtaining her thumb impressions on certain documents which were got signed by the defendant and her husband under the pretext of forms for pension enhancement. In the month of July, 2004, when the plaintiff fell ill, she called her daughter and showed her willingness to transfer the property in the name of her daughter. At that time, the defendant was also present there and she informed both the plaintiff and her daughter that the property in question was already sold to her by way of registered sale deed in the year 2000. The daughter of the plaintiff was given photostat copy of the alleged sale deed. The amount mentioned in the alleged sale deed was too less even at the time of execution of the alleged sale deed. The price of the land was about Rs.70,000/- and the construction in the house consisting of two rooms and one bathroom.

On notice, the defendant filed the written statement and took the preliminary objections that the suit was not properly valued for the purpose of Court fee and was bad for mis-joinder and non-joinder of necessary parties. On merits, it was admitted that the plaintiff was an old lady. She was keeping good health and was in

sound disposing mind at the time of execution of sale deed dated 28.08.2000 after receiving full and final consideration and the plaintiff has executed the same with her free will and consent and got it registered in the office of Sub Registrar in the presence of marginal witnesses. Daughter of the plaintiff had no cordial relations with the plaintiff and she did not care about her mother. The plaintiff had told the neighbourers that she would not give her property to her daughter because her daughter is very greedy and is not caring about her old mother and did not help her in her illness.

The trial Court framed the following issues:-

- “1. *Whether the plaintiff is the owner of the property in dispute? OPP.*
2. *Whether the sale deed dated 28.08.2000 is the result of fraud and misrepresentation? OPP.*
3. *Whether suit has not been value properly. OPD.*
4. *Whether the suit is not maintainable in the present form? OPD.*
5. *Whether the suit is bad for non joinder of necessary parties? OPD.*
6. *Whether the suit barred by limitation? OPD.*
7. *Relief.”*

After going through the evidence led by the parties, the trial Court returned a finding that the house in dispute was owned by Kesri-plaintiff. The plaintiff examined PW1 Charan Dass and PW2 Piare Lal as they were residing near the house of Kesri. After the death of her husband she was getting a pension of Rs.2500/- per month and Surinder Kaur was only daughter and child of Santa Singh and Kesri. The sale deed in question was false and fabricated and no

consideration was paid by the defendant to Kesri-plaintiff. Surinder Kaur stated in her affidavit that she is the daughter of Kesri and being legal representative of the deceased Santa Singh and the plaintiff Kesri was getting a pension of Rs.2500/- per month. She was owner of the suit property. Kesri was more than 90 years of age and defendant was on friendly terms. In August, 2000, when she was away from the house, on the pretext of getting the pension enhanced, she was taken to the office of Sub Registrar Jalandhar, where the sale deed in question was got executed. PW4 Pardeep Kumar, Clerk of Punjab National Bank has deposed that Kesri had a bank account in their bank and the same was proved as Ex.PW4/A. As per deposition of PW5 name of Kesri was mentioned at Sr. No.955 in the voter list which was proved as Ex.PW5/A. PW6 Prem Kumari is the teacher of Government Primary School, who stated that Surinder Kaur was admitted in the school on 11.05.1965 and her admission No. was 1089 and after 5th class she left the school on 08.04.1972. Copy of the school leaving certificate is Ex.PW6/A.

On the other hand, the defendant examined DW1 Sheela Devi i.e. defendant, DW2 Janak Raj, marginal witness of sale deed, DW3 Darshan Kumar, the other marginal witness, DW4 Prithi Pal Singh, deed writer, Tehsil Complex, Jalandhar, who prove the execution of the sale deed in question. DW2 and DW3 both were marginal witnesses. They prove the execution of the sale deed. DW4 Prithi Pal Singh, deed writer stated that on 28.08.2000, in his presence

Kesri had thumb marked and defendant signed in Hindi and both the marginal witnesses have also signed in his presence. DW5 Parveen Kumar, Clerk stated that on 28.08.2000, the sale deed was got registered in his office and has been mentioned at Sr. No.73, page No.46 and 47. The trial Court dismissed the suit of the plaintiff and held that the sale deed was duly proved by sufficient evidence by the defendant. The lower appellate Court on appeal has reversed the finding of the trial Court on the following grounds:-

1. The plaintiff was an old lady of 80 years. She was illiterate and used to put thumb impression on the documents. She was 80 years physically weak and was residing alone. As per the evidence, the defendant paid Rs.1,75,000/- as sale consideration. In the written statement, the defendant had alleged that Kesri was not having good/cordial relations with her daughter and she did not want to give property to her daughter. The sale consideration of Rs.1,75,000/- was not deposited in the account of plaintiff Ex.PW4/A. This account number was given by PW4 Pardeep Kumar, Clerk of the Punjab National Bank. There was no entry in this bank account with regard Rs.1,75,000/-. As per the deposition of DW2, he had had taken Rs.90,000/- from his friend Kala whereas DW1 had stated that she had taken Rs.90,000/- from her brother in law but no evidence was led to show that actually this amount had been borrowed by them. In the absence of any evidence of receiving and getting Rs.1,75,000/- by Kesri-plaintiff, the lower appellate Court held that the payment of sale

consideration was not proved.

2. In the sale deed Ex.D1, Darshan Kumar was shown as an attesting witness. If Darshan Kumar attesting witness was present at the time of execution of the sale deed, then why his signatures did not appear in the register of deed writer. Copy of the register of the deed writer Ex.DW4/A was proved by deed writer DW4 in which the signature of attesting witness Darshan Kumar was not present. Darshan Kumar did not sign the register of the deed writer. The absence of signatures of Darshan Kumar in the register of deed writer creates a doubt of the execution of the sale deed Ex.D1. This document was kept secret by the defendant as none of the neighbours where the plaintiff was residing was taken into confidence or was taken to attest the registration of the sale deed. Keeping in view age of the plaintiff and the fact that she was staying alone, it was held a case of misrepresentation. The plaintiff was made to sign the document Ex.D1 on the account of misrepresentation. In the sale deed Ex.D1, it was mentioned that possession was given to the plaintiff on the same day. However, the defendant and her husband admitted the possession of Kesri-plaintiff over the disputed property. The electricity connection was in the name of Kesri, ration card was of the same address and even the vote of Kesri was at the same address, Voters list has proved as Ex.PW5/A. Her death certificate Ex.PX also shows the same address. The lower Court reversed the finding of the trial Court in view of the above facts. Defendant did not claim the possession

over the disputed property in her written statement. After going through the judgment passed by the lower appellate Court, in the absence of any evidence, that amount of Rs.1,75,000/- was given to the plaintiff, who was an old lady of 80 years. Agreement to sell was executed in the year 2000. The lower appellate Court judgment does not require any interference as there was no evidence to the payment of sale consideration of Rs.1,75,000/- to the plaintiff-Kesri and her bank account number does not show any entry in this regard.

3. The lower appellate Court further examined the deposition of PW1 Piare Singh and PW2 Charan Dass who stated on oath that Surinder Kaur is the daughter of Kesri though she is her adopted daughter. The school record produced by the incharge of the school PW6 Prem Kumari Ex.PW6/A and school leaving certificate Mark A also shows that Surinder Kaur was daughter of Santa Singh and the plaintiff-Kesri, having her date of birth 04.05.1957 and she was a student of 5th class having a Sr. No.1089 and admitted in the school on 11.05.1965. These documents are more than 30 years old and have come from proper custody. Hence these documents were held to be sufficient to prove that Surinder Kaur is the daughter of Kesri and deceased Santa Singh. So, after the death of Santa Singh, suit property was to be devolved upon deceased Kesri and her daughter Surinder Kaur. In this way, Kesri was not competent to execute the sale deed of the disputed property in favour of the defendant. Hence the finding of the trial Court has rightly been reversed by the lower appellate Court.

Once there was no evidence that sale consideration has passed and that too in the absence of Surinder Kaur daughter of Kesri and Kesri could not sale the suit property to the defendant. The marginal witnesses had not signed the register of the deed writer despite being present at the time of execution of the agreement Ex.D1.

In view of the above facts, the execution of the agreement Ex.D1 became doubtful and the suit of the plaintiff has rightly been decreed by the lower appellate Court. The judgment of the lower appellate Court does not suffer from any perverse reading of evidence nor any substantial question of law arises for adjudication in this appeal.

Dismissed.

04.08.2015
Vinay

(RITU BAHRI)
JUDGE