

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

**Regular Second Appeal No.2293 of 2014 (O&M)
Date of Decision: September 08, 2015.**

Sukhdarshan Kaur and another

.....APPELLANT(s).

VERSUS

Nirmal Singh

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. L.S. Sidhu, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is regular second appeal against the judgment of the Courts below whereby the suit of the plaintiff seeking declaration of his title and possession over the suit property measuring 10 marlas being 10/34 share in the land measuring 1 kanal 14 marlas bearing khewat No.882 khatauni No.165min//3/1(1-14) situated in the revenue estate of village Jalalabad East, Tehsil and District Moga and further that the sale deed dated 26.12.2002 executed by the plaintiffs in favour of defendant is forged, fabricated document, result of fraud and without consideration, was dismissed.

Appellants-plaintiffs challenged the sale deed dated 26.12.2002 inter-alia on the following grounds:-

- (i) Plaintiffs continued to be in possession of the suit property and the defendant never demanded the possession of the same at any stage after

its purchase.

(ii) The sale deed was without consideration. In the sale deed, consideration of the suit property was mentioned as ₹40,000/- while the value of the land was not less than ₹20,000/- per marla at the relevant time and the market value of the house was not less than ₹4,50,000/-.

(iii) The electric connection in the disputed house is in the name of plaintiffs. The defendant was resident of Shahkot while the suit property is situated in Jalalabad East in District Moga, far away from the place where the defendant was residing and as such, defendant had no reason to purchase the suit property.

(iv) The signatures of plaintiffs were taken on blank papers as they were guarantors for the loan advanced to Sohan Singh by defendant and those signatures on blank papers were utilized to execute the sale deed in favour of defendant.

The respondent-defendant contested the claim of the appellant-plaintiff inter-alia pleading that the stamp papers for the execution of the sale deed were purchased by the plaintiffs. They had signed in the register of the stamp vendor. The sale deed was scribed by regular deed writer and was duly attested by Jagir Singh Lamberdar and Jarnail Singh. The entry of the sale deed was also made in the register of the deed writer, which was also signed by the plaintiffs who appeared before the Sub Registrar for the registration of the sale deed, where also it was read over and explained to them and after admitting its correctness, they signed the endorsement made by the Sub Registrar in the presence of witnesses. Plaintiffs have also handed

sale deed. Regarding the possession of the plaintiffs over the suit property, it was explained that the plaintiffs took the disputed site on rent from defendant under an agreement, which was also signed by the plaintiffs.

The pleas raised by the appellants-plaintiffs did not prevail and while dismissing the suit, Additional Civil Judge (Senior Division), Moga observed in para 22 of the judgment as follows:-

“22. So from the above discussed evidence led on file, it stands proved that plaintiffs had themselves executed sale deed dated 26.12.2002 in favour of defendant vide which they had sold the suit property to defendant for a sale consideration of Rs.40,000/- and on the same day, they also took on rent the premises in question from defendant through the rent agreement dated 26.12.2002 Ex.D4, execution of which stand duly proved by the testimony of DW2 Jarnail Singh. Possession of the original sale deed qua suit property by defendant all the more strengthens the case of defendant that the sale deed was executed by plaintiffs in favour of defendant. So, in such circumstances, plaintiffs are not entitled to the relief of declaration, rather they have concealed material facts from this court and they are estopped by their own act and conduct from filing the present suit. So, issue no.1 stands decided against plaintiffs and in favour of the defendant and issues No.4 and 5 stand decided in favour of defendant and against plaintiffs.”

In appeal, the first Appellate Court after detailed discussion of the evidence concluded in para 19 and 20 of the judgment, which reads as follows:-

“19. Factum of the matter is that there is overwhelming evidence brought on record by respondent-defendant to prove that plaintiffs-appellants had executed sale deed Ex.D3 on 26.12.2002. In Ex.D3 property in dispute is shown to have a dilapidated room, but as per site plan Ex.PW4/A it is comprised of three rooms, with open kitchen and bathroom. Plaintiffs-appellants have not brought on record any evidence to prove that this construction existed at the time of sale deed Ex.D3. Ex.PW4/A was prepared by PW4 M.L. Garg and his evidence does not prove as to when these rooms had come into existence. His evidence is not suffice to hold that construction depicted in Ex.PW4/A existed at the spot on the day of Ex.D3. Sale deed in question is dated 26.12.2002 and date put on site plan Ex.PW4/A might have come into existence after Ex.D3 because it is admitted fact that door of one room has been closed with bricks and doors of other two rooms do not have any closing. Bath room and kitchen are also in open yard. Thus, it is no ground to doubt genuineness of the sale deed Ex.D3.

20. Looking the mater minutely from all angles, difference in contents Ex.D3, mark PB, the fact that Jarnail Singh was witness of three documents of respondent-defendant, the fact that respondent-defendant does not own any other property at Jalalabad East, the fact that eight pages of sale deed in question do not bear signatures of Sukhmander Singh are not the solid reasons to set aside the impugned sale deed. Financial capacity of respondent-defendant is also not a factor to doubt genuineness of Ex.D3 because as per own case of the plaintiffs-appellants, respondent-defendant had lent Rs. One lac to Sohan Singh son of Hari Singh on their

assurance, who resides at a very distant place in Gujarat. If he has given the property in dispute on rent on the same day to plaintiffs-appellants that is not a matter of surprise, because it is his choice to deal with the property he likes after its purchase. It is not unnatural and unusual conduct. In the light of these facts and circumstances, none of the contention raised by learned counsel for plaintiffs-appellants is found tenable.”

Learned counsel for the appellants-plaintiffs has argued that the house in dispute is the only house of the appellants-plaintiffs which they had no reason to sell to the defendant. They continued to be in possession of the disputed house and in the event of the house having been purchased by the respondent-defendant, he must have taken the steps to take possession. This proves the plea of the appellants-plaintiffs that they had signed certain documents for some loan taken by Sohan Singh from the defendant as guarantors. Appellants-plaintiffs have come up with this plea that their signatures were taken on blank papers which were later on used by the respondent-defendant to fabricate the sale deed. He has also produced the evidence to prove this fact, which has been wrongly discarded by the Courts below.

So far as the plea of appellant-plaintiff that he is in possession of the suit property, the same has been admitted by defendants. A rent note dated 26.12.2002 was placed on record to prove that the possession of the plaintiff over the suit property is as a tenant and plaintiff Sukhmandar Singh had admitted his signatures over the rent agreement produced on record as Ex.D4. All the other pleas raised by learned counsel for the appellant-

plaintiff were discussed in detail by both the Courts below and have been duly answered.

The plea raised by the plaintiffs that they had signed some blank papers as surety for the loan of ₹1 lac advanced to Sohan by the defendant was rightly discarded on the ground that the loan to Sohan was advanced in the month of May, 2002 while the sale deed was executed on 26.12.2002. The appellants-plaintiffs had not denied the purchase of stamp papers, their signatures in the register of the deed writer, their signatures on the endorsement made by the Sub Registrar, their photographs on the sale deed. The plea of the appellants-plaintiffs about the adequacy of sale consideration was also discarded on the ground that a year before sale of the suit property for ₹40,000/-, the appellants-plaintiffs had purchased the same from its previous owner for a sum of ₹10,000/- and in this way, they had sold it at four times the price for which they had purchased.

The conclusion drawn by the Court of Additional Civil Judge (Senior Division), Moga in para 22 and Additional District Judge in para 19 and 20 are based on proper appreciation of facts and evidence on record and call for no interference by this Court.

No substantial question of law requiring determination arises in this appeal, which has no merits. Dismissed.

September 08, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE