

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.2801 of 2014 (O&M)

.....

Date of decision:28.7.2015

Soma Devi and another

.....Appellants

v.

Krishna Saini and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. H.K. Brinda, Advocate for the appellants.

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Inderjit Singh, J.

This regular second appeal has been filed by Soma Devi and Hari Pal-appellants/plaintiffs against Krishna Saini-respondent/defendant and Ram Pal, Sunita and Meena-proforma respondents challenging the impugned judgment and decree dated 13.12.2013 passed by the learned Additional District Judge, Ropar, vide which the appeal filed by the appellants-plaintiffs against the impugned judgment and decree dated 14.5.2013 passed by learned Additional Civil Judge (Senior Division), Anandpur Sahib, dismissing the suit of the plaintiffs, has been dismissed.

The brief facts of the case are that Bhagat Ram, who died during the pendency of the suit, through LRs filed the suit against Miss Krishna Saini daughter of Bhagat Ram for declaration to the effect that the plaintiff is the joint owner in possession of land measuring 2 Kanals 12

Marlas as fully described in the head note of the plaint and the sale deed dated 25.9.2006 allegedly executed by Bhagat Ram-plaintiff in favour of defendant is illegal, null and void, manipulated, forged and fabricated, without any consideration, result of undue influence and obtained by the defendant by playing fraud upon the plaintiff through active misrepresentation and in connivance with the scribe, interested witnesses and Joint Sub Registrar, Nangal and his office staff and the same is incapable of conferring any right on the defendant qua the land in the suit.

On the other hand, the defendant denied the averments made in the plaint. Relationship between the parties was admitted. It is stated that the plaintiff has no concern with the suit land which was sold to the defendant in the presence of witnesses and scribe vide sale deed dated 25.9.2006 for the valuable consideration. It was admitted that the plaintiff was of old age, but it was denied that he was ruralite person. He is living at Delhi and was running his business of catering independently. He was healthy person and he had good knowledge regarding the working of Government offices. He was not dependent on his children.

After framing the issues and after the parties led evidence, the learned Additional Civil Judge (Senior Division), Anandpur Sahib, dismissed the suit of the plaintiff vide judgment and decree dated 14.5.2013. Aggrieved from this judgment and decree, Smt. Soma Devi and Hari Pal-LRs of the plaintiff filed appeal before the learned District Judge, Ropar, which was dismissed vide judgment and decree dated 13.12.2013 by learned Additional District Judge, Ropar. Aggrieved from these judgments and

decrees passed by the Courts below, this regular second appeal has been filed by the appellants-plaintiffs.

I have heard learned counsel for the appellants and have gone through the record.

From the record, I find that the relationship between plaintiff-Bhagat Ram (since died) and Miss Krishna Saini-defendant is admitted fact. Miss Krishna Saini-defendant is unmarried daughter of Bhagat Ram.

At the time of arguments, learned counsel for the appellants admitted that at the time of execution of the sale deed, the family was joint and Krishna Saini was also residing in the family at Delhi. The suit land measuring 2 Kanals 12 Marlas is situated in Village Sehjowal, Tehsil Nangal, District Ropar (Punjab). The sale deed dated 25.9.2006 has been executed by Bhagat Ram in favour of the defendant i.e. his daughter vide registered sale deed dated 25.9.2006. The appellants-plaintiffs are alleging that this sale deed is result of undue influence, result of misrepresentation, fraud, without consideration, forged document etc. As the plaintiffs have come to the Court challenging the registered sale deed, therefore, the onus lies upon them to prove this allegation. As Bhagat Ram died during the pendency of the suit, therefore, one of his son, namely, Ram Pal came to the witness box. As per the evidence on record, at the time of execution of the sale deed he was in the foreign country and he came to India after about three years i.e. in the year 2009. This witness has no personal knowledge regarding the undue influence, misrepresentation etc. nor the sale deed was executed in his presence. Therefore, his evidence is mainly hearsay

evidence which has no value in the eyes of law. There is no other oral as well as any documentary evidence to support and corroborate his statement. The argument of the learned counsel for the appellants that Miss Krishna Saini was the only educated person in the family will not raise any presumption in favour of the plaintiff that this sale deed is result of undue influence and misrepresentation. The whole family was residing jointly at Delhi. There are brothers and other sisters of defendant-Krishna Saini, who were also residing in the family. There is no circumstance as to how Bhagat Ram was under the influence of the defendant i.e. his daughter. As per the evidence, Bhagat Ram was doing business of Halwai/catering. The other person Ram Pal was also doing the business of Halwai and now doing the work in foreign country. As per the statement of Ram Pal, Miss Krishna Saini was having a boutique in one of the shops of the family, so it also cannot be held that this sale deed was without consideration and Krishna Saini was not having any income. Learned counsel for the appellants also argued that Ram Pal has not been cross-examined on material points. As already held, the statement of Ram Pal PW-1 is mainly hearsay evidence so there is no question of remaining any material facts unchallenged in cross-examination.

The findings given by the Courts below are concurrent as per evidence and law. Nothing has been pointed out as to which evidence has been misread by the Courts below and as to how the findings given by the Courts below are perverse. No substantial question of law arises in this regular second appeal.

Therefore, from the above discussion, I find that the judgments and decrees passed by the Courts below are correct, as per evidence and law which do not require any interference from this Court and the same are upheld.

Consequently, finding no merit in the regular second appeal, the same is dismissed.

July 28, 2015.

(Inderjit Singh)
Judge

hsp