

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

R.S.A.No.2837 of 2014 (O&M)

Date of Decision: October 29th, 2015

Smt.Sunita & others

...Appellants

Versus

Alamveer Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

**Present: Mr.Vijay Lath, Advocate,
for the appellants.**

AMIT RAWAL, J. (Oral)

The challenge in the present Regular Second Appeal is to the concurrent findings of fact and law, whereby the suit for declaration and permanent injunction seeking setting-aside of the registered sale deeds dated 31.8.2006 and restraint order against the defendant not to interfere in the possession, has been dismissed.

Mr.Vijay Lath, learned counsel appearing on behalf of the appellant-plaintiffs submits that the sale deeds, aforementioned, have been got registered by playing fraud and misrepresentation. The ingredients of Order 6 Rule 4 CPC have not only been pleaded but proved. Both the Courts below have not noticed this fact. Even the sale deeds would show that the sale consideration has not been passed on before the Joint Sub Registrar, but was stated to have been passed on at home, whereas the

evidence on record is contrary to this fact. Rather, it has been shown that the payment has been made by the vendee to Budh Ram. He further submits that the defendant has not stepped into the witness box. Only his attorney, namely, Sanjiv Kumar has appeared. The signatures of vendee are not available on the register, thus, there is illegality and perversity in the impugned findings, much less, substantial questions of law arise for determination by this Court.

I have heard the learned counsel for the appellants and appraised the paper book.

The foremost ground for the appellant-plaintiffs to prove the ingredients of fraud and misrepresentation was to summon the record from the office of Joint Sub Registrar, inasmuch as that it has been categorically pleaded case that the Joint Sub Registrar, at the time of the registration of the sale deed, was not available. Nothing prevented the plaintiffs to summon the record whether the Joint Sub Registrar was available or not. On perusal of the photographs on the sale deeds, presence of the vendee and vendor behind the Registrar is there. Had a fraud been played upon the plaintiffs, they would have not sit idle for almost ten months when the suit was filed on 15.6.2007. No complaint to the police or private complaint has been filed. It has been mentioned in the sale deeds in question that the amount of consideration has been paid at home and, therefore, there was no payment before the Joint Sub Registrar, thus, the question would arise that the vendee had failed to make the payment, which necessitated the vendors to return back home from the office of Joint Sub Registrar. Except the bald statement of PW1 Dharam Pal, no other witness has been examined.

The judgment rendered by the Hon'ble Supreme Court in **Janak Dulari Devi and another Versus Kapildeo Rai and another, 2011(6) SCC 555** would not be applicable to the facts of the present case as it was a case where both the vendor and vendee had agreed to pass on the consideration after the registration of the sale deed, however, the facts of the present case are totally different.

The non-appearance of the defendant in the witness box would not have enabled the Court to draw adverse inference under Section 114 of the Indian Evidence Act. The judgment cited in this regard, i.e., **Adivekka & Ors. Versus Hanamavva Kom Ventakesh 'D' By LRs, 2007(2) R.C.R. (Civil) 811** would not be applicable. It is settled law that the plaintiff has to stand on his own legs, much less, discharge the onus as enshrined under Section 101 of the Indian Evidence Act.

There is no merit in the appeal. The same is accordingly dismissed.

October 29th, 2015
ramesh

(AMIT RAWAL)
JUDGE