

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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*C.M. No. 655-C of 2014 and
RSA No. 285 of 2014*

Date of decision: 28.11.2015

Shanti Devi

....APPELLANT

VERSUS

Genda Ram

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.S.Dinarpur, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Senior Division), Yamuna Nagar at Jagadhri dated 19.02.2010, whereby the suit for declaration to the effect that the appellant-plaintiff is owner in possession of the 1/3rd share of the land, as detailed in the head note of the suit, situated in revenue estate of Village Bansewala, Hadbast No. 50, Sub Tehsil Bilaspur, Tehsil Jagadhri, District Yamuna Nagar and that a registered sale deed No. 1198 dated 12.08.2005 executed by the appellant-plaintiff in favour of the respondent-defendant is illegal, null and void ab initio and result of fraud, misrepresentation and not binding upon the rights of the plaintiff, stands dismissed, appeal against which preferred by the appellant-plaintiff has also been dismissed by the District

Judge, Yamuna Nagar at Jagadhri on 09.05.2013.

2. It is the contention of the learned counsel for the appellant that the sale deed dated 12.08.2005 has wrongly been got executed by the respondent-defendant from the appellant-plaintiff by misleading her into signing certain documents before the Sub-Registrar on the pretext of partition of the land. He contends that the daughter of the respondent-defendant, namely, Santosh had approached the appellant-plaintiff and taken her along to the office of the Sub-Registrar for the partition of the land. At that moment, the appellant being an old and infirm lady, suffering from some eye ailment and being illiterate unable to understand the details of the documents, on which her thumb impressions have been taken by fraud. The relationship between the appellant-plaintiff and that of respondent-defendant being fiduciary in nature and believing her brother, she had proceeded to put her thumb impressions on the documents. She was never told that the said documents pertain to a sale deed of the property nor was any consideration amount paid to her. He, thus, contends that the sale deed being the result of a fraud and misrepresentation cannot bind the rights of the appellant-plaintiff.

3. He further submits that the Courts below have also overlooked the fact that one of the attesting witnesses, namely, Lal Chand-DW1, who is not the Namberdar of the village of the appellant-plaintiff but is resident of Village Nagalpatti whereas the appellant belongs to Village Bansewala. He also asserts that Genda Ram-respondent-defendant has not appeared as a witness before the trial Court and, therefore, has not come forth to support his claim. The general power of attorney, who has appeared on his behalf, has not been able to prove the case of the respondent and, therefore, the

respondent has not discharged his onus proving the due execution of the sale deed. He, therefore, contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

4. I have considered the submissions made by the learned counsel for the appellant and with his able assistance, have gone through the impugned judgments and decree.

5. It is true that the initial onus, which was on the appellant-plaintiff stands discharged, as has been rightly observed by the Courts below and the onus, therefore, shifted upon the respondent to prove the due execution of the sale deed, in accordance with law, as the appellant-plaintiff was an aged, illiterate woman, suffering from infirmity such as weak eye sight and she had a fiduciary relationship with the respondent-defendant. He being the beneficiary, the respondent-defendant had to discharge the said onus, which, in the considered opinion of this Court, the respondent-defendant has duly discharged on the basis of the evidence of his general power of attorney, namely, Santosh, who appeared as DW3, who was also present at the time of execution of the sale deed. Apart from the general power of attorney, who had appeared, two other witnesses, namely, Yuva Ram DW2, who is the co-villager of the appellant-plaintiff and native of Village Bansewala has supported the case of the respondent and Lal Chand DW-1 also, who is the Namberdar of a different village, as has been asserted, came forth and proved the case of the respondent. It is not in dispute that these two witnesses are the attesting witnesses of the sale deed and they had specifically stated with regard to the documents having been read over to the appellant-plaintiff and the consideration amount having changed hands in the presence of the Sub-Registrar.

6. It would not be out of way to mention here that in the sale deed Ex. D1, there is clear-cut endorsement duly signed by the Sub-Registrar mentioning that the sale consideration was paid to the vendor in his presence. The presumption with regard to the correctness of the registered document under Section 60(2) of the Registration Act, 1908 further fortifies the oral evidence led by the respondent that is of the attesting witnesses, namely, Yova Ram-DW2 and Lal Chand-DW1. That apart, the sale deed has been scribed by an Advocate, who had appeared as a witness DW4, who had deposed that he had drafted the sale deed on the instructions of the appellant-plaintiff and after getting it typed had read over its contents to her and she had, thereafter, put her thumb impressions on the documents after admitting the contents to be correct in the presence of the attesting witnesses, namely, Lal Chand, Nambardar, DW1 and Yova Ram-DW2. There is overwhelming evidence, which discharges the onus which was cast upon the respondent-defendant, therefore, the assertion of the learned counsel for the appellant cannot be accepted.

7. An argument has been raised by the learned counsel for the appellant that after the execution of the sale deed dated 12.08.2005, the matter was agitated by the appellant-plaintiff before the Panchayat where a compromise dated 23.12.2005 Ex. P3 has taken place but the learned trial Court has specifically stated, in its judgment, that as per the writing in the compromise, the same did not pertain to the controversy, as has been raised in the present suit rather it was with regard to a dispute between two brothers, namely, Sunder Lal and the respondent-defendant Genda Ram. The said compromise, therefore, has no relevance with the case in hand.

8. There being concurrent findings recorded by the Courts below

on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

9. In view of the above, finding no merit in the present appeal, the same stands dismissed.

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In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

November 28, 2015

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**