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

RSA-5590-2015

Date of decision-21.10.2015.

SHAM MURTI

...Appellant

VS

SAWINDERA WANTI & ORS

...Respondents

CORAM:- HON'BLE MR. JUSTICE K.KANNAN

Present: Mr. Sarabjeet Khaira, Advocate
for the appellants.

K.KANNAN, J (Oral)

[1] The appeal is at the instance of the second defendant, who filed a suit for recovery of possession filed by the plaintiff who was the step mother. The father of the second defendant and the husband of the plaintiff was first defendant in suit. Defendants No.3 and 4 were said to be subsequent purchasers of the suit from the second defendant.

[2] The suit was filed for a declaration and for recovery of possession of the house property claimed by the plaintiff as a purchaser from her husband under registered document dated 26.02.1997. The sale deed was written by PW-3 who gave evidence with reference to the entries in the register and from the recitals contained in the document that he had actually written the document at the bidding of the plaintiff of the first defendant. The Court found that photographs of both the plaintiff and the first defendant had

been affixed in the sale deed. The plaintiff's contention was that having executed the sale deed in their favour, the second defendant had fraudulently obtained sale of the very same property in his name through a subsequent document dated 14.12.1999. The plaintiff's contention was that the sale executed in favour of second defendant after the sale in her favour was invalid and in-operative. The plaintiff claimed that she had been in possession of the property but dispossessed forcibly by the defendants in October 2000. The plaintiff examined a person, namely, Kashmir Singh, who gave evidence about his knowledge that the plaintiff was actually enjoying the property till when she was forcibly dispossessed.

[3] The trial stood for consideration of whether the sale in favour of the plaintiff is true and whether there could be lawful sale in favour of the defendant in second appeal in respect of the very same subject matter. The Court observed responding to an argument from the defendants that non-examination of witness to the sale deed was immaterial, for, the identification of the executant as the first defendant was clearly brought-forth by the affixture of the first defendant's photographs in the sale deed. The Court observed that the first defendant himself had not challenged the sale during his life time and if he was purported to have sale deed in favour of second defendant subsequently through a transaction dated 14.12.1999, it must only be taken that the subsequent sale was invalid and in-operative. The plaintiff's right could not have been denied even by a mere contention that there was no positive evidence of payment of cash

consideration under the sale deed. The want of consideration could only be an issue for a person who assailed the sale deed which in this case could have been competently done only by the husband and the transfer ought to take effect and at best, the transferor could only be in a position to claim the consideration recited, if it had not been paid.

[4] I have already observed that the first defendant had no complaint to make during his life time that the consideration had not been paid nor he did not take any step to have the sale deed set aside at any time. If the genuineness of the document of sale could be vouched with reference to the evidence of the plaintiff as well as the evidence of PW-3, the issue of whether the second defendant could have obtained title occupies but the simple consideration that such a sale by the second defendant after the purchase by the plaintiff was invalid and would not create any title. The trial Court and the Appellate Court have on a consideration of the validity of the sale deed granted the relief of recovery of possession as well.

[5] Learned counsel appearing on behalf of the appellant states that the husband had fought litigation against his wife and for maintenance and it is conceivable that he had executed the sale deed in favour of the plaintiff. The defendant must be looking for explanation for himself through the contract of the first defendant. It is just as well possible that the liability for maintenance itself could have been the pressing consideration for sale. I will not venture a guess but I will hold that it can be no argument to state that the

father need not have sold the property. If we must apply the same token of logic, one may ask as to why the father was effecting sale in favour of his son, if he cannot effect sale in favour of his wife. This type of discussion or analysis will be meaningless, for, the question to be raised is whether a document that stands registered was ineffective for any reasons stated by the defendant. If the sale in favour of the plaintiff had to be treated as sham in the manner contended by the counsel, such a plea cannot be matter of argument without pleading.

[6] I find no support for even a contention that the first defendant was executing the sale for any oblique motive for transferring such property through a registered document. A consideration of a transaction as shown can not be brought without specific pleadings and the attention of parties brought through a specific issue to that effect. It cannot be brought as a point of contention in second appeal.

[7] The learned counsel also states that the properties were never be shown to ancestral property. If a transfer of property takes place through registered document and the person, who is entitled to be in possession, seeks for recovery of possession, such a claim cannot be defeated by any person in possession unless he proved that he had better title or his possession has become adverse. The sale in favour of the plaintiff was on 26.02.1997 and the suit had been instituted in year 2001. There was no scope for the defendants who held a subsequent document of sale to retain his possession,

since he obtained no title under the document. If the second defendant had also sold the property subsequently to defendants No.3 and 4, the fallibility that was attached to his own purchase would be applicable also to purchase by defendants No.3 and 4 as well. They also would obtain no title. The plea of the bona fides on the ground that the Municipal records had been transferred in the name of the second defendant or the subsequent purchasers cannot convey any better title. Even the plea of bona fides was untenable for the suit was instituted in 2001 by the person, who had title and even the plea of bona fides of a purchaser cannot extend to secure title as a purchaser from a person who had no title and to fend off claim by the plaintiff.

[8] The decision rendered by the Courts below upholding the claim by the plaintiff and granting to her the benefit of possession conform to evidence on well established principles of law and I find no room for intervening in favour of appellant.

[9] The appeal is wholly without merits. It is dismissed.

(K.KANNAN)
JUDGE

October 21, 2015
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