

**IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF
PUNJAB AND HARYANA, AT CHANDIGARH**

Regular Second Appeal No. 3214 of 2014(O&M)

Date of Decision: February 26, 2015

Gurcharan Singh

....Appellant

Versus

Jaswinder Kaur & others

....Respondents

CORAM: HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN.

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

1. Whether Reporters of local papers may be allowed to see the judgment? **Yes/No**
2. To be referred to the Reporter or not? **Yes/No**
3. Whether the judgment should be reported in the Digest? **Yes/No**

Mahavir S. Chauhan, J:

Appellant, by way of Civil Suit No. 402 of July 26, 2007 preferred by him before learned Civil Judge (Senior Division), Ferozepur (hereinafter referred to as 'the trial court) sued his widowed daughters in law to seek declaration that mutation No. 759 dated October 10, 2002 sanctioned on the basis of a registered deed of transfer dated October 10, 2002 (Exhibit D1) is illegal being without consideration, jamabandi entries showing his sons as owners of the suit land are wrong and liable to be rectified, and he continues to be owner-in-possession of the suit land as fully described in the body of the plaint; and for perpetual prohibitory injunction restraining them from interfering in his peaceful possession over the suit

Regular Second Appeal No. 3214 of 2014(O&M)

property, by alleging that he did not appear before the Sub Registrar and did not execute the deed of transfer which, instead, was result of fraud, misrepresentation and connivance of his deceased sons with attesting witnesses thereof and, as such, inoperative qua his rights. His plea, however, was refuted by the respondents by filing a written statement of denial. Pleadings of the parties gave rise to issues with regard to the declaration and injunction sought by the appellant, maintainability and valuation of the suit, lack of cause of action, locus standi of the appellant, bar of limitation, and absence of statutory notice (as regards respondent No. 04, the Halqa Patwari). Appellant, besides himself appearing as PW1 and tendering Exhibit P1-khasra girdawari and Exhibit P2-jamabandi, examined Namberdar Balraj Singh in proof of his plea which was sought to be controverted by the respondents by examining defendants-respondents Harwinder Kaur (DW1) and Surinder Kaur (DW2) and Namberdar Hardeep Singh (DW3). Learned trial court, on appreciation of evidence and after hearing the parties dismissed appellant's suit vide judgment/decreed dated December 07, 2011 by holding that execution of the deed of transfer by him in favour of his deceased sons was fully proved and he was not able to prove the plea of fraud. Court of learned Additional District Judge, Ferozepur (hereinafter referred to as 'the first appellate court'), vide judgment and decree dated March 11, 2014 has affirmed the findings recorded by the learned trial court while dismissing appeal (Civil Appeal No.4 of 2.1.2012) of the appellant.

02. To assail the concurrent findings of fact recorded by the learned trial court and the learned first appellate court appellant is in regular second appeal. Besides examining the judgments recorded by the courts below, I have heard appellant's learned counsel, Shri L.S. Sidhu, Advocate. He argues that there was

Regular Second Appeal No. 3214 of 2014(O&M)

no occasion for the appellant to execute the deed of transfer and evidence brought on record by him sufficiently establishes that it is outcome of fraud played upon him by his deceased sons but the courts below have misread the evidence and have recorded perverse findings to non suit the appellant.

03. Perusal of the judgments recorded by the courts below, however, reveals that appellant, while appearing as PW1 had admitted his photograph alongwith his sons and Namberdar Malkiat Singh and attesting witness Malkiat Singh, PW2 Balraj Singh, has admitted that the appellant had transferred the suit land in favour of his sons. Deed of transfer, Exhibit D1, is a registered document and registration of a document is a solemn act to be performed in the presence of a competent official appointed to act as a Registrar, whose duty is to attend to the parties during registration process and to see that the proper parties are present, are competent to act and are identified to his satisfaction and all things done before him in his official capacity and verified by his signature are presumed to be done duly and in order. Therefore, the certificate endorsed on the sale deed by the Registering Officer under Section 60 of Registration Act is a relevant piece of evidence for proving its execution (per *Piara v. Fattu*, AIR 1929 Lahore 711, *Subhash Kumar v. Prabhu Dayal*, 1994 PLJ 443, *Daljinder Singh v. Harbans Kaur*, 2001 (2) CCC 530, *Joginder Singh v. Surinder Singh*, 1997 (Suppl.) CCC 339, *Kartar Kaur v. Bhagwan Kaur*-1993 CCC 171). There, thus, being a presumption that a registered document is validly executed, onus of proof, therefore, would be on a person who leads evidence to rebut the presumption (per *Prem Singh & Ors. v. Birbal & Ors.*-2006(3) RCR(Civil) 381). Sub Registrar, before whom the deed of transfer was registered has not been examined and evidence of Gurcharan Singh (PW1) and Balraj Singh (PW2) is far from being sufficient to rebut the presumption as regards its execution.

Regular Second Appeal No. 3214 of 2014(O&M)

04. Further, when fraud, misrepresentation or undue influence is alleged by a party in a suit, as in the present proceedings, normally, the burden is on him to prove such fraud, undue influence or misrepresentation (per Krishna Mohan Kul v. Pratima Maity, (2004) 9 SCC 468 as approvingly cited in M/s. Gian Chand & Brothers and Another V. Rattan Lal @ Rattan Singh, Civil Appeal No. 130 of 2013 arising out of S.L.P. (C) No. 13950 of 2009, decided on January 8, 2013). *(See also Shashi Kumar Banerjee v. Subodh Kumar Bannerjee since deceased and after him his legal representatives, AIR 1964 SC 529)* and fraud like any other charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt (per Lord Atkin in A. L. N. Narayanan Chettyar v. Official Assignee, High Court Rangoon, AIR 1941 PC 93). However suspicious may be the circumstances, however strange the coincidences, and however grave the doubts, suspicion alone can never take the place of proof. In our normal life we are sometimes faced with unexplainable phenomenon and strange coincidences, for, as it is said, truth is stranger than fiction (per Union of India v. M/s. Chaturbhai M. Patel and Co., AIR 1976 SC 712:1976 CurLJ 166:1976(2) SCR 902:1976(1) SCC 747). The appellant, however, has failed to bring any evidence, whatsoever, to prove his plea of fraud. He is not shown to have made a complaint before any police or civil authority alleging fraud and did not make a challenge to the deed of transfer till his three sons remained alive and, above this all, has failed to explain why did he wait till July 26, 2007 to make a challenge to the deed of transfer which came into being on October 10, 2002 and how the suit was within time.

05. For the reasons recorded above, the appeal is found to lack in merit and not to involve any question of law, much less a substantial one, and, as such, is dismissed *in limine*.

Regular Second Appeal No. 3214 of 2014(O&M)

06. With the dismissal of the appeal, pending miscellaneous applications, if any, are rendered infructuous and are disposed of accordingly.

[Mahavir S. Chauhan]
Judge

February 26, 2015
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