113 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4425 of 2014 (O&M)
Date of decision: December 15, 2015

Harnam Singh ...Appellant

Versus

Jai Parkash ...Respondent

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the appellant.

JASPAL SINGH, J.

1. The instant appeal has been preferred by plaintiff-Harnam Singh against judgment and decree dated October 11, 2013 passed by the trial Court as well as judgment and decree dated July 01, 2014 passed by the lower Appellate Court whereby the findings recorded by the trial Court have been upheld and the appeal filed by the plaintiff against the judgment and decree passed by the trial Court has been dismissed. Accordingly, the suit filed by the plaintiff seeking declaration to the effect that mortgage deed No.328/1 dated May 31, 2010 qua land measuring 15 Kanal 10 Marla, 6 Sarsai situated within the revenue estate of Shimla Gujran, Sub-Tehsil Bapoli, District Panipat has been dismissed.

2. While assailing the findings recorded by the Courts below on all the issues as well as the impugned judgments and decrees passed by the lower Court and affirmed by the lower Appellate Court, it has been ebulliently argued by learned counsel for the appellant-plaintiff that same

are absolutely against the evidence available on file and settled canons of law. Mis-appreciation of evidence has resulted into miscarriage of justice.

3. It is amply proved on record that alleged mortgage deed dated May 31, 2010 is without consideration and is a sham transaction. Neither the appellant-plaintiff ever approached the defendant for any financial assistance nor any amount was borrowed by him. In fact the respondent-defendant exercised coercion and pressure upon him and forced him to get the mortgage deed registered in his favour. Not only this, even respondent-defendant was not in a position to part-with such a huge amount of Rs.10,00,000/-. Even nothing was also paid by the respondent to the appellant in the presence of Sub-Registrar at the time of alleged registration of the mortgage deed. It is the outcome of fraud and misrepresentation and as such, does not confer any right upon the respondent qua the suit land. Though the respondent-defendant has taken a plea that he sold away two houses belonging to him as well as a buffalo to collect money to be paid by him to the appellant, but to the utter surprise no such documentary evidence has been produced on record. Thus judgment and decree dated October 11, 2013 passed by the trial Court as well as judgment and decree dated July 01, 2014 passed by the lower Appellate Court affirming the judgment and decree of the trial Court being against evidence available on file are liable to be set aside and consequently, the suit of the appellant-plaintiff merits decretal in toto.

4. This Court has given due consideration to the submissions made by learned counsel for the appellant but find the same to be without any substance.

5. Through the instant lis, appellant-plaintiff has sought the declaration to the effect that mortgage deed dated May 31, 2010 is illegal, null, void, not binding upon his rights, and further, that it is a forged and fabricated document and no consideration did pass at the time of its execution and registration. Thus, onus heavily relies upon the appellant-plaintiff to prove that mortgage deed is a sham transaction or that it is a forged and fabricated one. But to the utter surprise the appellant-plaintiff has miserably failed to place on record any evidence. Even there is no specific plea taken as to how the fraud and misrepresentation has been played or exercised by the respondent-defendant.

6. Adverting to the facts of the instant case, it would be appropriate to mention that the appellant-plaintiff has clearly admitted while appearing in the witness box that at the time of registration of the mortgage deed he appeared before the Sub-Registrar. The contents of the mortgage deed were read over and explained to him and it was only thereafter, he appended his thumb impression, that too, in the presence of Sub-Registrar. Not only this, it has also been admitted by him that mortgage deed was witnessed by Ram Kumar Nambardar, Ramesh Kumar and Naresh Kumar, its attesting witnesses. It is also worthwhile to mention here that respondent-defendant Jai Parkash previously filed a suit for possession before the Civil Judge (Senior Division), Panipat which was partly decreed for recovery of mortgaged amount of Rs.9,19,000/- along with interest @ 12% per annum. The said judgment and decree in civil suit No.103/2013 filed by Jai Pal has become final and conclusive as no appeal has been preferred by the appellant-plaintiff challenging the aforesaid judgment and decree. The

execution of mortgage deed also stands proved beyond doubt from the evidence brought on record by the respondent-defendant and it can be said easily that the appellant-plaintiff has failed to prove that the mortgage deed is a result of fraud and misrepresentation or that it is a forged and fabricated document or that consideration did not pass any recital in it. Moreover, when there is a registered document existing in between the parties, any oral evidence brought on record challenging its terms and conditions, is of no evidenciary value. The registration of the mortgage deed further fortifies its authenticity that it was the appellant-plaintiff who appeared before Sub-Registrar and signed/thumb-marked the same after having admitted its contents to be corrected. The mortgage deed admittedly bears the thumb impression of the appellant-plaintiff. Thus taking the case of the appellant-plaintiff from any of the angles, this Court does not find any merit in it. Rather the impugned judgment and decrees passed by both the Courts below being absolutely in consonance with the evidence available on file as well as legal proposition do not call in any interference by this Court, as such, the same are affirmed and the instant appeal being devoid of merits is dismissed.

7. However the parties are left to bear their own costs.

December 15, 2015 **(JASPAL SINGH)**
avin **JUDGE**