

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

**RSA No.5712 of 2014 (O & M)
Date of Decision:05.02.2015**

Dariya Singh

....appellant

Versus

Balbir Singh

.....respondent

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

Present: Mr.Sanjiv Gupta, Advocate
for the appellant

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiff was dismissed by the trial Court vide judgement and decree dated 02.09.2011. Appeal preferred against the said decree failed and was dismissed on 30.04.2014. This is how, plaintiff is before this Court in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiff, he prayed for a declaration that the sale deed No.1092 dated 03.01.1995, as regards the agricultural land measuring 09K-19M situated at village Naultha, Tehsil Israna, District Panipat, was null and void. Possession was also claimed as regards the property mentioned in para No.3 of the prayer clause and also for injunction restraining the defendant from alienating the property in any manner. It was averred that the plaintiff and defendant were cousin brothers. And as plaintiff was facing hardship in the year 1995 to cultivate the suit land, since he had

started residing at Panipat, he was approached by the defendant to mortgage the suit land with him. Resultantly, plaintiff mortgaged the suit property for a consideration of ₹ 1,00,000/- and defendant was put in possession thereof. It was maintained that the plaintiff was brought to Tehsil Israna for registration of the mortgage deed and his thumb impression were obtained on certain papers. It was agreed between the parties that as and when, plaintiff would require the suit property, he would return the mortgage amount and accordingly, possession of the suit property would be re-delivered. Finally, in March 2007, when plaintiff approached the defendant to redeem the suit property and offered the mortgage amount, defendant denied to have entered into any such mortgage and rather claimed himself to be the owner. Plaintiff approached the halqa patwari and was further surprised to know that, in fact, a sale deed bearing No.1092 dated 03.01.1995 was got registered by the defendant rather than the mortgage deed. Therefore, the sale deed dated 03.01.1995 was a result of fraud and was illegal and void.

In defence, it was pleaded inter alia, that in fact, plaintiff did not require the suit land that was situated in village Naultha as he himself was residing at Panipat and, therefore, he decided to sell the same. The suit property was in his exclusive possession pursuant to a mutual partition between the plaintiff and his other co-sharers, though, the same was never entered into the revenue record. It was maintained that the plaintiff after duly understanding the contents of the sale deed and accepting them to be correct thumb marked the same before the Sub-Registrar, Israna and received the sale

consideration of ₹ 1,00,000/- from the defendant. It was denied that the suit property was ever mortgaged by the defendant. Sale deed dated 03.01.1995 was well within the knowledge of the plaintiff right from the day of its execution and thus, no fraud was played by the defendant upon the plaintiff.

On a consideration of the matter in issue and the evidence on record, the Courts below found that the execution of the sale deed dated 03.01.1995 was duly proved by the defendant. Plea of the plaintiff that sale deed in question was a result of fraud played upon the plaintiff, remained un-substantiated on record. In fact, pursuant to the sale deed dated 03.01.1995, the suit property was mutated in the name of the defendant and, he was shown to be the owner in possession in the revenue record. The present suit was filed by the plaintiff after approximately 12 years from the date of execution of the sale deed dated 21.04.2007. Thus, the suit was also held to be barred by time. Further, the plea sought to be raised by the plaintiff that the suit property was ancestral in the hands of the plaintiff was also repelled as none of the heirs of the plaintiff ever questioned the sale deed dated 03.01.1995. Still further, no complaint was ever filed by the plaintiff against the defendant, that he had defrauded him. Though, defendant claimed that the plaintiff being in exclusive possession of the suit property had sold specific khasra numbers and, thus, the defendant was in exclusive possession, however, nothing was brought on record to prove that there was ever any partition between the plaintiff and his co-sharers.

Accordingly, it was observed that alienation of the suit property by the

plaintiff, vide sale deed dated 03.01.1995, would be deemed to be a sale of share only. Resultantly, the suit, and thereafter, even the appeal preferred by the plaintiff was dismissed.

I have heard learned counsel for the appellant and perused the RSA paper book.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the Courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Needless to assert, for plaintiff to be entitled to the declaration prayed for, he was required to substantiate that the sale deed dated 03.01.1995 was indeed, a result of fraud played by the defendant upon the plaintiff. Ex facie, neither the requisite pleadings nor any evidence was adduced in this regard. As set out in the plaint, itself, plaintiff was facing a financial hardship and, thus, obtained a consideration for a sum of ₹ 1,00,000/- from the defendant, though the case set out by him was that the suit property was merely mortgaged with defendant with possession. However, the reference completely belie and vitiate the claim of the plaintiff as defendant had led sufficient evidence on record to prove the due and valid execution of the sale deed dated 03.01.1995. On the contrary, defendant examined Ishwar Singh-DW1, who testified in his

statement that the plaintiff had sold the suit property to the defendant and he was put in possession thereof. So much so, pursuant to the sale deed in question, the suit property was mutated in the name of the defendant and, thereafter, he was shown to be the owner in possession thereof in the record of rights. Neither the plaintiff ever questioned the said position in the revenue record nor ever assailed the sale deed in question for a period of 12 long years as the suit was instituted on 21.04.2007. Likewise, Ashok Kumar-DW2, who scribed the sale deed (Ex.D1) testified the due and valid execution of the sale deed dated 03.01.1995. He further deposed that the contents of the sale deed were duly read over and explained to the plaintiff, who after understanding and admitting the correctness thereof affixed his signatures in the presence of the witnesses. Budh Ram-DW3, i.e.registration clerk brought the summoned record to prove that the document in question was duly registered by the authorities. Satnarain Patwari-DW5 proved the revenue record and deposed that the plaintiff was reflected in the record of rights to be the owner in possession in khasra No.181/8-9. Sanjay Kumar-DW7 i.e.son of the tehsildar, who died on 24.02.2001, proved the death certificate of his father and identified the signatures of his father upon the sale deed Ex.D1. Similarly, Om Parkash-DW8 also proved that the plaintiff indeed had sold the land measuring 09K-19M to the plaintiff for a consideration of ₹ 1,00,000/- and the possession of the same was handed over to the defendant at the spot. Concededly, the sale deed dated 03.01.1995, bears the thumb impression of the plaintiff. The suit property was situated at village Naulatha and

plaintiff was concededly residing at Panipat for the last 30/40 years.

The case set out by the plaintiff himself was that he was facing hardship to cultivate the suit property. That being so, he alienated the same for a consideration. Story sought to be pleaded that in fact the suit property was mortgaged, ex facie, lacks truth and bona fides. In fact, institution of the suit by the plaintiff, after almost 12 years from the date of execution of the sale deed dated 21.04.2007 was not only misconceived but nothing short of abuse of process.

Learned counsel for the appellant could not point out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any material illegality.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

05.02.2015

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**(ARUN PALLI)
JUDGE**