

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 6448 of 2014(O&M)
Date of Decision: November 18, 2015

Darshan Kumar

..... Appellant

Versus

Ritu Jain and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Nitin Thatai, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (Oral)

The appellant-defendant No.2 is in Regular Second Appeal against the judgment and decree of the lower appellate court whereby the civil suit bearing No.120 of 20.5.1997 titled as Darshan Kumar Vs. Ritu Jain and others has been set aside. In essence, the sale deed dated 25.9.1995 allegedly executed by Mann Kaur in favour of the appellant has been set aside.

Learned counsel appearing on behalf of the appellant submits that prior to execution of the sale deed dated 25.9.1995 Mann Kaur had executed a General Power of Attorney dated 27.10.1994 in favour of Anita Jain. However during the pendency of the agreement to sell, the General Power of Attorney aforementioned was cancelled on 25.9.1995 and on the same day the sale deed has been executed in favour of the appellant by Mann

Kaur against a valuable consideration. The cancellation deed is a registered one and notice thereof was also sent through registered post to Anita Jain. Trial court, though, partly decreed the suit by setting aside the sale deed executed by the attorney Anita Jain in favour of Ritu Jain on 6/9.10.1995 but the lower appellate court has, erroneously allowed the appeal of the Ritu Jain on the premise that the sale deed executed in favour of the appellant was found to be suffering from suspicious circumstances and thus, prays that such a finding is not only erroneous but perverse as the witnesses of the sale deed have categorically proved the execution, much less passing of the consideration and thus a substantial question of law arise for determination by this court.

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

Shorn of the facts, noticed above, during the hearing of the appeal I have gone through the statement of defendant No.1-Mann Kaur who unequivocally admitted that she had not sold the suit property/house to Darshan Singh-defendant No.2-appellant vide sale deed dated 25.9.1995. This fact has totally been ignored by the trial court and as well as by the lower appellate court. Though, the reasoning given by the appellate court viz-a-viz sale deed was surrounded by suspicious circumstances, but in my view is correct, for the reason that signatures of Mann Kaur are above the mark as crossed on the stamp paper, it appeared that signatures were obtained on blank papers and thereafter documents were prepared. The court cannot remain oblivious of the fact that there is

categoric pleading in the suit that Anita Jain had married Darshan Singh, however their relationship became strained and ultimately they separated and agreement to sell dated 18.8.1994 was allegedly witnessed by Darshan Singh. He had knowledge of execution of the agreement to sell but had tried to play trick on Mann Kaur to get the Power of Attorney dated 27.10.1994 cancelled on 25.9.1995 and get the sale deed, on the same day in his favour.

The plea that registered document has a presumption, there is no dispute with regard to the case law cited by the learned counsel for the appellant in **Prem Singh and others Vs. Birbal and others 2006 (3) RCR (Civil) 381 and Jasvir Singh Vs. Mohan Singh and others 2010 (3) RCR (Civil) 654** but the fact remain that each case is to be dealt with on examination of oral and documentary evidence lead on record and thereafter a finding has to be rendered whether the registration of the document was preceeded by fraud/misrepresentation or not. Since I have already observed above that Darshan Singh has managed to get the sale deed executed in his favour from Mann Kaur but the fact remains that she never sold the property. Nothing surfaced in the cross examination of Mann Kaur, in essence, Darshan Singh could not ascertain anything in his favour from the cross-examination of Mann Kaur.

I do not intend to differ with the finding rendered by the lower appellate court which is based on appreciation of oral and documentary evidence whereby the civil suit bearing No.120 of 1997 has been dismissed. I do not find any illegality or perversity in the aforementioned judgment and decree of the appellate court.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

November 18, 2015
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