

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

RSA No.331 of 2011 (O&M)

Date of decision : 10.05.2016

Om Pati and others

...Appellants

Versus

Satish Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Rahul Sharma-I, Advocate for the appellants.

Mr. Harkesh Manuja, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

The appellants-plaintiffs are aggrieved of the dismissal of the suit and appeal filed against thereto, seeking declaration for setting aside of the sale deed dated 26.07.1984 in respect of land measuring 60 kanals 12 marlas.

Mr. Rahul Sharma-I, learned counsel appearing on behalf of appellants-plaintiffs submits that Roshan Lal and Kali Ram in auction held in the year 1984 were allotted aforementioned land but unfortunately he died on 11.05.1982 vide Ex.P2-death certificate. The sale deed certificate and conveyance deed were issued on 30.04.1984 and 03.05.1984 respectively, thus, Roshan Lal could not have executed the sale deed when he was no longer in existence in this world. The sale deed qua his share is liable to be set aside. The

Courts have totally misread and misdirected in not appreciating the documentary evidence brought on record. It is not understandable as how conveyance deed would have thumb impression of Roshan Lal as he died two years back. The death certificate has also been disbelieved as PW4 Nirmal Kaur who had brought the record was not able to give specific answer whereas said evidence would not be material as record come from the custody of the Department maintaining birth and death record of person in the vicinity. On acquiring the knowledge, suit was immediately filed. Even the other co-owner namely Kali Ram had also appeared as PW2 who stated that he was made to sign certain documents which resulted into sale deed and urges this Court for formulation of the substantial question of law as culled out in the memorandum of appeal.

Mr. Harkesh Manuja, learned counsel appearing on behalf of respondents-defendants submits that no explanation has come forth by filing the suit in 2005 seeking setting aside of the registered documents executed in 1984 which carries presumption of truth. Kali Ram himself has not challenged the sale deed and, therefore, this factor alone is sufficient ground for denying the relief and rightly so, after appreciating the oral and documentary evidence did not grant permission to leave as set forth. No effort has been made to get the thumb impression examined on the conveyance deed dated 03.05.1984 in support of the averments made in the plaint and thus urges this Court for affirmation of the findings rendered by both the Courts below.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and substance in the plea of Mr. Sharma-I, for, no explanation has come forth in filing suit in 2005.

Limitation to challenge the registered document is 3 years. Sale deed is of

26.07.1984. Even Kali Ram PW2 who appeared did not challenge the same. In the absence of the comparison of the thumb impression, the statement of PW2 could not be said to be in consonance with the provision of Section 50 of the Indian Evidence Act. The trial Court disbelieved the statement of PW4 on the premise that register maintained by the office had many blanks and did not explain the factum of the information qua death of Roshan Lal. No evidence from the concerned cremation ground has been proved to authenticate the aforementioned death certificate. In the absence of the evidence, I am of the view that appellants have failed to discharge the burden, much less, onus.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below, much less, no substantial question of law arises for determination by this Court.

Appeal is dismissed.

10.05.2016

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**(AMIT RAWAL)
JUDGE**