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

RSA-4118-2011 (O&M)

Date of decision : 28.04.2016

Prem Singh (Deceased through LRs) and others

... Appellants

Versus

Rajinder Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Surjit Singh Swaich, Advocate
for the appellants.

Mr. Baljinder Singh, Advocate
for respondent No.1.

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)

CM Nos.11827-C of 2014, 11915-C of 2011 and 11916-C of 2011

Prayer in these applications filed under Order 22 Rule 3 read with Section 151 CPC is for impleading the legal representatives of, Prem Singh, Jang Singh and Jaspal Singh.

For the reasons stated in the applications, the applications are allowed and the legal representatives of Prem Singh, Jang Singh and Jaspal Singh, are permitted to be brought on record for the purpose of prosecuting the appeal.

CMs stand disposed of.

RSA-4118-2011

The appellants-defendants are in this regular second appeal against the judgment and decree rendered by the lower Appellate Court, whereby the suit of respondent(s)-plaintiff(s) claiming declaration for setting aside of the sale deed dated 04.06.1997 bearing Vasika Nos.383 and 384 has been decreed, in essence, the judgment and decree of the trial Court dismissing the suit has been reversed

Mr. Surjit Singh Swaich, learned counsel appearing on behalf of the appellants-defendants submits that vide aforementioned sale deed, the respondent(s)-plaintiff(s) had sold the land to the appellants-defendants. The declaration by filing the suit has been sought on 03.06.2000. There had been a series of incidents prior to the aforementioned sale deed, for that the same very property vide sale deed dated 09.08.1996 was sold by Jarnail Singh Power attorney holder of Sital Singh in favour of the respondent(s)-plaintiff(s). The power attorney, aforementioned, is dated 13.07.1996. The aforementioned action was challenged by filing a suit on 20.09.1997, however, vide statement dated 23.09.1997 (Ex.P-7), the suit was withdrawn by suffering a statement that sale deed dated 04.06.1997 has already been executed. He submits that an FIR bearing No.46 dated 26.06.1997 was registered against the respondent(s)-plaintiff(s) in which he was arrested on 14.06.1999. The genesis/foundation of the suit had been that during the period when sale deed was executed, he was behind the bars, much less, in the custody of police and therefore, fraud and misrepresentation, much less, coercion had been played. The trial Court after noticing the facts held that the respondent(s)-plaintiff(s) has not been able to prove the ingredients of Order 6 Rule 4 CPC and dismissed the suit, but the

lower Appellate Court reversed the findings, merely by treading in the arena of surmises and conjecture, thus, urges this Court to formulate the following substantial questions of law:-

1. Whether the judgment and decree of the lower Appellate Court suffers from illegality and perversity.
2. Whether the judgment and decree of the lower Appellate Court, in the absence of any evidence of misrepresentation and fraud, is legal and justified.

Mr. Baljinder Singh, learned counsel appearing on behalf of respondent No.1-plaintiff submits that in the earlier instituted suit, the appellants-defendants herein-respondents therein, suffer statement for compromising the matter. By that time sale deed had already been executed, nothing prevented him to produce the sale deed as the suit had been rendered infructuous. The sale deed has been effected by playing a fraud and misrepresentation and coercion and rightly so, the suit has been filed and the remedy, if any, was to seek the setting aside of the sale deed by seeking declaration as per Section 34 of the Specific Relief Act, 1963 (hereinafter called 'the 1963 Act'). The lower Appellate Court being the last court of fact and law, after examining the oral and documentary evidence, found substance in the suit and decreed the same, thus, urges this Court for affirming the findings, under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a substance and force in the plea of Mr. S.S. Swaich, for, the respondent(s)-plaintiff(s) has failed to lead any evidence, much less, order of the Court or record from the police station qua his arrest on

the alleged date, when the aforementioned sale deed dated 04.06.1997 bearing Vasika Nos.383 and 384 were executed. Ingredients of Order 6 Rule 4 CPC are conspicuously wanting.

It is a matter of record that he was arrested on 14.06.1999, whereas the sale deed is dated 04.06.1997. No explanation has come forth in seeking the vindication of grievance for a period of two years as the suit was instituted on 03.06.2000. Seeking an adjournment for compromise pales into insignificance, particularly, when on 23.09.1997, statement was suffered, let the sale deed dated 04.06.1997 executed. This fact was in the notice of the plaintiffs, yet they chose to sleep over the matter and filed the suit just few days before limitation period expired. These facts have not been noticed by the lower Appellate Court, thus, finding rendered by the lower Appellate Court suffers from illegality and perversity, much less, fallacious and is hereby set aside. Substantial questions of law as noticed above are answered in favour of the appellants-defendants and against the respondent(s)-plaintiff(s). Judgment and decree of the trial Court is restored.

Resultantly, the appeal is allowed.

28.04.2016
yogesh

(AMIT RAWAL)
JUDGE