

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1864 of 2012(O&M)
DATE OF DECISION: October 6,2016

Gurpreet Kaur and another

...Appellants

versus

Harbans Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Sanjeev Manrai, Senior Advocate with
Mr.Gaurav Talwar, Advocate for the appellants.
Mr.S.K.Arora, Advocate for the respondent.

AMIT RAWAL, J.

The defendants are appellants before this Court.
They are aggrieved of the concurrent findings recorded by both
the Courts below whereby a suit for declaration was decreed.

A suit for declaration was filed by the respondent-
plaintiff claiming to be owner and in possession of the suit land,
measuring 16 kanals. Since the respondent-plaintiff was
suffering from mental depression, appellant-defendant No.1 got
executed sale deed dated 27.11.2003. However, the appellant-
defendants denied that the respondent-plaintiff was suffering
from depression, but stated that the legal and valid sale deed

dated 27.11.2003 for a consideration of Rs.3,50,000/- was executed in favour of appellant-defendant No.1. The sale consideration of Rs.3,50,000/- was received by the respondent-plaintiff at home and out of that amount, the plaintiff-respondent paid Rs.1,30,000/- for the repayment of the loan amount.

On appraisal of evidence, the trial Court decreed the suit filed by the respondent-plaintiff by declaring the same to be as null and void and the respondent-plaintiff was declared as owner in possession of the suit land.

The appellants-defendants took the matter in appeal, but the learned First Appellate Court, on re-appraisal of evidence, affirmed the findings recorded by the trial Court.

Now the appellants-defendants approached this Court through the present Regular Second appeal.

During the pendency of appeal, by moving the miscellaneous application bearing CM No.12092-C of 2016, certain documents are sought to be placed on record by way of additional evidence. In the aforesaid application, the copies of judgment and decree dated 6.11.2008 are annexed as Annexure P.1, which shows that the suit for possession by way of specific performance of agreement to sell dated 12.3.2003 extended on 12.3.2004 was filed by one Shaminder Singh alias Sukhmander Singh, against the respondent-plaintiff (Harbans

Singh – defendant No.1 in that suit) and appellant-defendant No.1 (Gupreet Kaur – defendant No.2 in the suit) for execution of the sale deed in respect of the same very land on or before 15.3.2005, for consideration of Rs.2,50,000/-. In that suit, a challenge was made to the sale deed dated 27.11.2003 executed by Harbans Singh (defendant No.1) in favour of Gupreet Kaur (defendant No.2). However, respondent-plaintiff (Harbans Singh) denied the execution of agreement to sell stated that same was result of forged and fabricated document, much less, result of fraud as no consideration, was, ever passed. Appellant-defendant No.1 (Gupreet Kaur) denied the execution of agreement to sell. The land measuring 16 kanals vide sale deed dated 27.11.2003 was purchased from respondent-plaintiff for a consideration of Rs.3,50,000/-. Although the vendor (Harbans Singh) appeared in the examination-in-chief, but did not come forward for cross-examination. Ultimately, the suit was decreed only, for alternative relief of recovery. The other document sought to be placed on record is a copy of the criminal case instituted by Shaminder Singh @ Sukhmander Singh as Annexure P.2. In that case, the respondent-plaintiff has been held guilty under section 420 IPC. The third document is an affidavit, Annexure P.3, furnished by the respondent-plaintiff showing that he had executed a sale deed dated 27.11.2003 for a consideration of

Rs.3,50,000/-. By placing all these documents, learned senior counsel for the appellants wishes to show that all these facts have been ignored by the Courts below, if taken would have been able to successful in decretal of suit.

Mr.Sanjeev Manrai, learned senior counsel assisted by Mr.Gaurav Talwar, Advocate appearing for the appellants submits that the respondent-plaintiff has failed to discharge the onus as enshrined under Order VI Rule 4 CPC, inasmuch as, for succeeding in a suit based upon the misrepresentation and fraud, not only the pleadings, but the cogent evidence is to be led, that he was suffering from mental depression then as a result thereof, execution of the sale deed dated 27.11.2003 was nullity. He further submits that in the aforesaid litigation, the respondent-plaintiff did not deny the execution of sale deed dated 27.11.2003, rather admitted that it was executed for a consideration of Rs.3,50,000/-. He also submits that the respondent-plaintiff had examined the two attesting witnesses of the sale deed who admitted their signatures but denial of sale consideration having not passed, in their presence has no substance, inasmuch as, sale consideration was passed on at home. Even the statement of accounts Ex.D1 and Ex.D2 reveal that the amount of Rs.75,000/- was deposited in the loan account of the respondent-plaintiff. Thus, on the basis of

evidence available on record, the suit of the respondent-plaintiff is liable to be dismissed.

Mr.S.K.Arora, learned counsel for the respondent-plaintiff submits that the sale deed dated 27.11.2003 itself was void, inasmuch as, it was without consideration. Thus, the Courts below have rightly set aside the sale deed even in the absence of medical evidence. Even the statement of accounts produced on record do not show the agreed sale consideration of Rs.3,50,000/-.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties.

Under the provisions of under Order VI Rule 4 CPC, the respondent-plaintiff is required to discharge the onus, inasmuch as, for succeeding in a suit based upon the misrepresentation and fraud, not only the pleadings, but the cogent evidence is to be led that he was suffering from mental depression by treating sale deed dated 27.11.2003 as nullity but no such evidence has been led in this regard. For all intents and purposes, the respondent-plaintiff admitted his signatures on the sale deed. The consideration was in terms of money. The evidence of two attesting witnesses, namely, Hakam Singh and Naib Singh regarding denial of sale consideration in their presence has no substance, inasmuch as, firstly, the respondent-plaintiff failed to discharge the onus of

fraud and misrepresentation and secondly, there is no denial in the earlier round of litigation with regard to execution of the sale deed dated 27.11.2003. Moreover, the consideration can be passed to the vendor at any point of time or place. In the present case, the appellant-defendant No.1 came out with the evidence that sale consideration was earlier paid at home, as plaintiff had to repay the loan amount borrowed by the respondent-plaintiff. This evidence is strengthened by the additional evidence sought to be led by the appellants which shows that at no point of time the respondent-plaintiff had never denied the execution of the sale deed dated 27.11.2003 in favour of the appellant No.1, rather furnished an affidavit in the criminal proceedings that the sale deed was executed for a consideration of Rs.3,50,000/-. Moreover, the respondent-plaintiff stepped into the witness box only for examination-in-chief but did not come forward for cross-examination. Perhaps, the respondent-plaintiff was afraid, of being, having confronted of the aforementioned fact and, therefore, it can well be inferred that there was no denial in the mouth of the respondent-plaintiff with regard to the sale deed dated 27.11.2003 for a consideration of Rs.3,50,000/-. In my view, all these factors have been ignored by the Courts below. Thus, the documents

noticed above, are taken on record, being the records of the Court, by way of additional evidence.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in "Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213", wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in "Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262", on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

"Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100

as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)] cannot be sustained and is thus overruled." [at paras 27 - 29]"

27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such

law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force."

In view of the aforesaid discussion, the appeal of the defendants is allowed and the judgments and decrees of the Court below are set aside and the suit of the respondent-plaintiff is hereby dismissed. Consequently, the sale deed dated 27.11.2003 is held to be legal and valid by virtue of which appellants are owner in possession of the suit land measuring 16 kanals.

October 06, 2016
KD

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No