

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

RSA-2207 of 2013 (O&M)

Date of decision: 24.02.2016

Tarsem Singh

...Appellant

Versus

Balbir Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. C.L. Sharma, Advocate
for the appellant.

Mr. K.S. Cheema, Advocate
for the respondent.

Jitendra Chauhan, J. (Oral)

The defendant/appellant Tarsem Singh is in second appeal challenging the judgment dated 23.02.2010, passed by the trial Court and judgment dated 28.01.2013, passed by the Appellate Court.

2. It is contended that both the Courts below have gravely erred in holding that the sale deed dated 01.04.1992 is fraudulent transaction being executed by plaintiff, Gurdas Singh a simpleton since birth. The Courts below have wrongly relied upon the

testimony of DW3, Dr. Manjit Singh, who has issued the Medical Certificate to the effect that said Gurdas Singh and his son are mentally retarded persons since their birth. The said witness had duly admitted that the plaintiff, Gurdas Singh was examined by him only on one date as an outdoor patient and no extensive test were carried upon him and the opinion of the doctor is based upon the observations made by him by putting questions to the patient. He further contends that the plaintiff, Gurdas Singh was earlier in service and in fact it was a made up story to show him as mentally retarded. Even, DW5, Vijay Kumar Sharma, Naib Tehsildar had also deposed that he read over the contents of the sale deed to Gurdas Singh and he put his thumb impression over the same in token of its correctness, which also shows that he possessed a sound mind. The learned counsel has further submitted that the said Gurdas Singh did not appear in the witness for cross examination, which circumstance itself warrants to draw an adverse inference against him.

3. On the other hand, the learned counsel for the respondent states that the respondent is a simpleton which has been duly proved from the testimony of DW3, Dr. Manjit Singh. Therefore, the learned trial Court has rightly relied upon the statement of this witness as he was found to be incapable of

forming opinion qua his good or bad. He prays for dismissal of the present appeal.

4. I have heard the rival contentions of learned counsel for the parties.

5. The appellant challenged the impugned judgments on the ground that the suit property was owned and possessed by respondent, Gurdas Singh prior to 01.04.1992 and thereafter, the same was sold to the appellant for total consideration of Rs.1,87,500/-, vide sale deed dated 01.04.1992 and the respondent is not a simpleton person. This Court has perused the entire record and on appreciation of the same, no material has been found in support of the claim of the appellant. Both the Courts have rightly relied upon the judgment Ex.PA, with regard to the earlier litigation between the parties, wherein it has been held that Baldev Singh son of Jagdish Singh by misusing the mental capacity of the respondent, Gurdas Singh, got the documents executed from him and as such, those documents were liable to be set aside. It has also been recorded in Ex.PA that Gurdas Singh was an old and infirm fellow and was unable to understand his well being. No doubt, the sale deed in question was got executed from the respondent but nothing has been paid to the respondent and his signatures were obtained by playing fraud upon him. The testimony of DW3, Dr.

Manjit Singh had duly proved that respondent, Gurdas Singh, his son Balbir Singh are simpleton and they cannot understand their good or bad. No evidence has come on record to substantiate that anything has been paid towards execution of sale deed. The 1st Appellate Court came to the conclusion that Tarsem Singh cannot derive any right, title or interest particularly when he failed to prove himself to be bona fide purchaser for valuable consideration.

6. Earlier also, the appellant had filed a suit against the respondent which was subsequently withdrawn for reasons best known to him. Thus, both the Courts below have rightly held that the sale deed was executed by taking advantage of the feeble mental faculty of the respondent and the same was the result of fraudulent representation and is without consideration. There is no illegality or perversity in the impugned judgments passed by the Courts below and the same are hereby affirmed as such. Hence, no interference is called for.

Dismissed, with costs. Counsel fee assessed Rs.5500/-.

Interim status quo order dated 24.04.2015 stands vacated.

24.02.2016

sumit.k

(JITENDRA CHAUHAN)
JUDGE