

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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RSA No. 4808 of 2013

Date of Decision: 22.04.2016

Baljeet

.....APPELLANT

VERSUS

Smt. Meena Kumari and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

PRESENT: Mr. M.S.Kathuria, Advocate,
for Mr. Rakesh Nehra, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Bahadurgarh dated 24.02.2012 whereby the suit for declaration with consequential relief of permanent injunction has been decreed of the respondents-plaintiffs, appeal against which preferred by the appellants-defendants has been dismissed by the Additional District Judge, Jhajjar on 23.08.2013.

2. It is the contention of the learned counsel for the appellant-defendant No. 2-Baljeet that an agreement to sell dated 02.06.2004 was duly executed by Mahabir-defendant No. 1, who unfortunately died during the pendency of the suit. The said agreement to sell is prior to the date of registered sale deed No. 3334 dated 13.08.2004 in favour of the respondents-plaintiffs. Although the registered sale deed in favour of the appellant-defendant No. 2 was also got registered vide No. 4253 dated 21.09.2004 by Mahabir but the appellant-defendant No. 2 has been non-

sued only on the ground that the sale deed in favour of the respondents-plaintiffs is prior in time than that of the appellant-defendant No. 2. He contends that Mahabir-defendant No. 1 has specifically denied the execution of the sale deed dated 13.08.2004 in favour of the respondents-plaintiffs. He contends that once the execution of the document has been denied by the owner of the property, the onus was upon the respondents-plaintiffs to prove that the sale deed has been duly executed by Mahabir-defendant No. 1 in their favour, which onus has not been discharged by the respondents-plaintiffs. He contends that the Courts below have wrongly proceeded to shift the onus upon the defendants by asserting that since the execution of the sale deed dated 13.08.2004 has been denied and it was asserted that it was a fake and fabricated document, therefore, it was for the defendants to prove this assertion. He contends that the Courts below have wrongly proceeded to decide the case on the said assumption rather it should have been upon the plaintiffs to prove it otherwise. Apart from that, he asserts that since the agreement to sell dated 02.06.2004 in favour of the appellant-defendants was prior in time to the execution of the sale deed dated 13.08.2004 in favour of the respondents-plaintiffs, the appellant had a prior right to the land especially when in the agreement to sell, it was specifically stated that the possession has also been handed over at the time of the execution of the agreement to sell. Apart from that, he asserts that after the sale deed dated 21.09.2004, even mutation has been sanctioned on 08.10.2004 in favour of the appellant-defendants which clearly shows that the appellant-defendant No. 2 is the real owner of the property and the sale deed dated 13.08.2004 was a fake and fabricated document, which has been projected by the respondents-plaintiffs. He, therefore, contends that the

impugned judgments and decree cannot sustain and deserve to be set aside.

3. I have considered the submissions made by the learned counsel for the appellant and with his able assistance, have gone through the impugned judgments.

4. The fact, which is not in dispute, is that although the agreement to sell dated 02.06.2004 with possession of the suit land is asserted to have been executed in favour of the appellant-defendants but the said document has not been registered and in the absence of it being a registered document, the same cannot be taken into consideration for asserting that the agreement to sell has been duly executed especially in the light of the fact that the registration is mandated under the Statute. Not only that, it has also not been notarized by any notary public. The agreement to sell, on which reliance has been placed by the appellant-defendants, thus, cannot be of any avail qua the appellant-defendants. Admittedly, the sale deed dated 13.08.2004 in favour of the respondents-plaintiffs is prior in time to the sale deed dated 21.09.2004 executed in favour of the appellant-defendants and, therefore, it is established that the respondents-plaintiffs were the owners of the suit land as per the said registered sale deed.

5. The assertion of the counsel for the appellant that the onus was upon the respondents-plaintiffs to prove the due execution of the sale deed dated 13.08.2004 that Mahabir-defendant No. 1 had denied the said document and asserted it to be a fake and fabricated one, cannot be accepted as it is a positive assertion on the part of the respondent-defendant No. 1 that the sale deed has not been executed by him. It may be added here that a registered document carries with it the presumption of its due execution.

The onus, therefore, has rightly been put on the defendants by the Courts

below to prove the assertion as has been made by them in their written statement. Admittedly, the said onus has not been discharged by either producing any evidence in support of the said assertion apart from the bald statement. It may be added here that no expert witness has been examined to prove the thumb impressions on the registered sale deed dated 13.08.2004 being not of Mahabir-defendant No. 1. It may be added further here that no criminal proceedings have been initiated by Mahabir-defendant No. 1 against the respondents-plaintiffs which is expected from a prudent person, had he not executed the said sale deed. The presumption, therefore, has rightly been drawn by the Courts below to the extent that the agreement to sell because of its non-registration dated 02.06.2004 is an afterthought and taken as a plea for defending the subsequent sale deed dated 21.09.2004. I do not find any illegality in the impugned judgments which would call for interference by this Court in the present appeal.

6. No other point has been raised or argued by the counsel for the appellant.

7. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below.

8. There is no substantial question of law in the present appeal, which requires consideration of this Court.

9. In view of the above, finding no merit in the present appeal, the same stands dismissed.

April 22, 2016

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**