IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No.443 of 2016
Date of decision: 04.04.2016

Mohinder Singh ..Appellant

Versus

Diwan Chand (since deceased) through
his LRs and others ..Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Arun K. Bakshi, Advocate
for the appellant.

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Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 23.07.2015, passed by learned Additional District Judge, Jalandhar, (for short, the 'first Appellate Court') whereby, the appeal filed by the plaintiff-appellant, against the judgment and decree dated 31.03.2014, passed by learned Civil Judge, (Jr. Divn.), Nakodar, (for short, the 'trial Court') dismissing the suit of the plaintiff-appellant with special costs, has been dismissed, with costs.

The learned counsel for the appellant contends that the sale deed dated 17.06.1996 registered on 24.06.1996 is the result of fraud, misrepresentation and impersonation as the appellant had been residing in England since long and had visited India only in

December, 1997. He submits that the learned Courts below have ignored the material evidence of report of the handwriting expert, PW6-Mr. Varun Gagneja, which categorically stated that the signatures in question were not tallying with standard signatures and statement of respondent No.1-Rakesh Kumar, wherein he wrongly identified Sh. Sat Pal Virdi, attorney of the appellant, as the appellant. Further, DW-2, Kuldeep Kumar, marginal witness to the alleged sale deed could not disclose that whether the Sub-Registrar was a male or female, which makes his presence doubtful at the time of the execution of the alleged sale deed. Lastly, it is asserted that the signatures on the alleged sale deed are in Punjabi language but in fact the appellant never signed the document in vernacular, i.e. Punjabi during his whole life time. Therefore, the respondents have failed to prove the due execution of the alleged sale deed and the learned Courts below have erroneously passed the impugned judgments and decrees.

I have heard the learned counsel for the appellant and carefully perused the entire record.

The case of the appellant is that the alleged sale deed dated 17.06.1996/24.06.1996 is the result of fraud, misrepresentation and impersonation. To prove his case, the appellant has stated that he had been residing in England since long and was not present in India at the time of execution of the alleged sale deed and placed on record the sale deeds, Ex.PW1/B to PW1/Y. However, sale deeds as Ex.PW1/B, Ex.PW1/C and Ex.PW1/D, executed by the appellant shows the execution dates as 28.06.1996, 29.10.1996 and 23.06.1997, respectively, which falsified the pleadings of the appellant that he had been residing abroad since many years and had visited India only in the month of December, 1997. The appellant has not led any cogent and convincing evidence to establish his stand that at the time of execution of the alleged sale deed he was abroad or was not in India. The best evidence available to prove that on a particular date he was in India or not was his passport, which was not brought on record for the reasons best known to him. So, adverse inference is to be drawn against him that he may be in India on the date of execution and registration of the sale deed. There are two signatures of the appellant on the first page of the alleged sale deed, one in English, admitted by him and another in vernacular, i.e. Punjabi. This admitted fact also refute the stand of the appellant that he was not present at the relevant time. Further, DW-2, Kuldeep Kumar, who being neighbour of the appellant and marginal witness of the alleged sale deed, reiterates the case of the respondents. To rebut the testimony of respondent No.1 that at the time of execution of the alleged sale deed, Sub-Registrar was a male, the appellant place on record the information report of the RTI officer, Ex.P2/G. However, the said report reveals that at the relevant period, there were two Sub-Registrars, one being male and other a female. The sale deed, in question was signed by the male Sub-Registrar, which corroborates the testimony of respondent No.1. In this considered view, the appellant has failed to prove that there is any fraud, misrepresentation and impersonation in the execution of the alleged sale deed.

Reference in this regard can be made to '**Har Narain and another VS. Revti Parkash and others**', **2012(2) PLR 409 (P&H)**, wherein it was held that decree could be set aside on the ground of fraud. Plaintiffs have, however, miserably failed to prove the alleged fraud. Even in civil cases, fraud is required to be proved beyond reasonable doubt just like a criminal charge. In this case, what to talk of proving the alleged fraud beyond reasonable doubt, the plaintiff-appellant has even failed to establish the alleged fraud by preponderance of evidence. The appellant has miserably failed to prove his case. Therefore, the learned Courts below have rightly dismissed the suit of the plaintiff and dismissed the appeal vide impugned judgments and decrees.

On consideration, this Court finds that the contentions of the learned counsel for the appellant only relate to the appreciation of evidence. Neither any evidence is shown to have been ignored from consideration, nor there is any misreading of evidence. These are pure findings of fact. No question of law, much less substantial question of law, arises in the present appeal. Hence, no interference is called for.

Dismissed in limine.

04.04.2016 **(JITENDRA CHAUHAN)**
ashok **JUDGE**