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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4228-2015 [O&M]

Date of Decision : January 18th, 2016

Darshan Singh

.... Appellant

Versus

Lachhman Dass [Now deceased] through L.Rs.

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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?

Present Mr. Jasmail Singh Brar, Advocate,
for the appellant.

SHEKHER DHAWAN, J.

Present Regular Second Appeal by the plaintiff is directed against the concurrent findings of both the Courts below, whereby suit filed by him was dismissed by Civil Judge [Junior Division] Nabha vide judgment and decree dated 9.7.2014. The appeal filed by him was also dismissed by learned Additional District Judge, Patiala vide judgment and decree dated 7.5.2015.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

3. Relevant facts of the case for the purpose of decision of this appeal are that the plaintiff had filed a suit for declaration on the ground that defendant – Lachman Dass [since deceased] was the managing Partner of Commission Agency firm, namely, M/s Lachman Dass & Sons.

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The plaintiff used to sell his crops through this firm and used to take small loans and and thereafter used to adjust the same at the time of sale of his crops. Relations between both the parties were of utmost confidence. In the month of July, 2009, running account between the parties was settled and a sum of Rs.1,50,000/- was found due towards the plaintiff. The defendant insisted for execution for the document of his land in his favour as collateral security. Signatures were obtained by way of misrepresentation. The defendant entered into criminal conspiracy with Gurpal Singh, Deed Writer, Gurpreet Singh, Nambardar of village Sudhewal and Parminder Singh, Joint Sub Registrar, Bhadson and some employees of the said office. Alleged mortgage deed is illegal, null and void. The plaintiff never appeared before the Joint Sub Registrar, Bhadson for registration of alleged mortgage deed. There was no reason for making payment of Rs.15.00 lacs as mortgage money for 5 Bighas of land whereas 5 Bighas of land could be purchased for a value much less than Rs.15.00 lacs. The plaintiff was in possession of the suit property even before the execution of alleged mortgage deed and even the recital in the mortgage deed are in correct. The manipulated photograph was pasted on the alleged mortgage deed and that was affixed by photographic trick. Thereafter, the defendant tried to take forcible possession in the 2nd week of May, 2010 and started claiming that suit property has been mortgaged for Rs.15.00 lakhs and as such, plaintiff filed the present suit.

4. The defendants contested the suit taking the plea that the plaintiff has filed the suit with totally incorrect facts. In fact, the plaintiff had purchased stamp papers worth Rs. 60,000/- from Government treasury. Thereafter he got executed registered mortgage deed after receiving

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Rs.15.00 lakhs. The said amount was received by him for sending his son Hardeep Singh to a foreign country. Defendant – Lachman Dass was running Commission Agency shop. He was a cancer patient since May, 2010 and shop was being looked after by his son, Amaninder Kumar. Defendant also had admitted the fact that through his shop, the plaintiff used to sell his wheat crop at Sirhind Mandi. However, the plaintiff sold his last wheat crop at Sirhind Mandi of Bhadso and payment of Rs.15.00 lacs was made by the defendant as he was to send his son abroad and thereafter registered mortgage deed was executed and on the basis of the same, mutation was sanctioned. The plaintiff came to know that the defendant had developed cancer in April, 2010 and may not survive, at that stage, the present suit was filed.

5. On the pleadings of the parties, issues were framed and after appreciating the entire evidence brought on record by the parties, the Court of First instance dismissed the suit of the plaintiff. The appeal filed before the Court of first Appeal was also dismissed. As such, the present Regular Second Appeal.

6. Learned counsel for the appellant submitted that both the Courts below have not considered the facts that case of the defendant is based on entirely incorrect facts. As per the defendant, payment of Rs.15.00 lakhs was made as the plaintiff was to send his son to some foreign country. However, the defendant has made contradictory version whether son of the plaintiff was sent earlier or at a later stage. He further submitted that the possession of the suit land has never been handed over to the respondents. The same is with the appellant and the defendants should have filed latest jamabandi showing possession of the

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suit property but that has not been done. The Courts below have completely ignored these facts which resulted into erroneous findings of Courts below and the present Regular Second Appeal be accepted and the impugned judgments be set-aside.

7. Having considered the submissions made by learned counsel for the appellant, most of the facts are not disputed in any way. The plaintiff was owner of the suit land. Registered mortgage deed was executed which bears signatures of the plaintiff as well as his photograph. Payment was said to have been made before the Joint Sub Registrar, Bhadson and the parties put their signatures in token of that. It is also not in dispute that Hardeep Singh son of the present appellant had gone to Spain. The factum of execution of registered mortgage deed stands proved on the file on the basis of execution of the documents as well as statements of the attesting witnesses. Otherwise also, the said document is a registered document. More so, as per the statement of PW-2, Harjit Sijng, Halqa Patwari, mutation on the basis of mortgage deed has already been sanctioned in favour of Lachman Dass. The present appellant has come with the plea of fraud and misrepresentation which does not find any support or corroboration from any evidence available on the file. It is very easy to allege fraud at any stage. More so, it is a case of registered mortgage. The plaintiff-appellant was required to prove that he was a victim of any fraud or misrepresentation in any way or at least to make out some case in that regard, but there is nothing on the file except mere plea of being victim of fraud which law does not accept to be a valid defence in comparison to registered document, which stands duly proved. There is recital in the mortgage deed that vacant possession of the land was

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handed over to the defendant.

8. In view of the above facts and the concurrent findings recorded by both the Courts below there are no ground to interfere and set aside the said findings. There is no substantial question of law involved in the present appeal and hence, the same is not maintainable under Section 100 of the Code of Civil Procedure. Such a view was taken by Hon'ble Supreme Court in case **Santosh Hazari Vs. Purushottam Tiwai (Dead) by LRs., JT 2001(2) SC 407.** Resultantly, the present Regular Second Appeal stands dismissed.

**(SHEKHER DHAWAN)
JUDGE**

January 18th, 2016
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