

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

**RSA No.4973 of 2015 (O&M)
Date of Decision.08.09.2016**

Mohinder Singh

.....Appellant

Vs

Rajwant Kaur

.....Respondent

Present: Mr. AGS Dhillon, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

-.-

AMIT RAWAL J. (ORAL)

The appellant-plaintiff is aggrieved of the dismissal of the suit seeking declaration of the sale deed dated 12.12.2002 executed by defendant No.2 in favour of defendant No.1 in respect of the suit property is result of fraud and misrepresentation and therefore, the Courts below have committed illegality and perversity in dismissing the suit.

The case set out in the plaint was that defendant No.2 is his mother and the beneficiary of the sale deed is none else but the wife of his brother. Kapoor Singh was the father of the plaintiff and husband of defendant No.2 which was original owner of the suit land along with other land and after his death, mutation of inheritance was sanctioned in favour of plaintiff, defendant No.2 and other brothers. The dispute arose between the parties and defendant No.1 got kidnapped the defendant No.2 on 01.12.2002 with the help of her brother's son namely Chhinda and the plaintiff allegedly lodged a report No.16 dated 12.01.2003 with police station, Julkan. He submits that the sale deed allegedly executed on 12.12.2002 is null and void, without consideration and result of misrepresentation and fraud.

Defendant No.1 contested the suit but denied all the allegations levelled in the plaint and submitted that the registered sale deed executed for consideration and carries presumption of truth and moreover, the plaintiff had

no locus standi to challenge the same. He submits that in order to prove the case, he appeared as PW-1 and reiterated the averments in the plaint. Both the Courts below have failed to appreciate the fact with regard to lodging of the FIR. A clincher of fraud had been played upon defendant no.2, thus, urges this Court for setting aside the concurrent finding of fact rendered by the Courts below by allowing the second appeal.

I have heard learned counsel for the appellant, appraised the paper book and of the view that the plaintiff has not been able to bring any direct, cogent and positive, much less, corroborative evidence to, prima facie, point out whether he was owner of the property or property at the hands of defendant No.2 was ancestral in nature. Even the mutation has not been placed on record to show that property after the demise of Kapoor Singh, had devolved upon the legal heirs by way of natural succession. Kartar Kaur was absolute owner of the property. She could enjoy and deal with the property the way she wanted to and she did not come forward to challenge the sale. It appears that after execution of the sale deed, she colluded with her son and fought the proxy litigation, owing to the fact that the suit has not been contested by her.

In my view, the plaintiff has failed to satisfy the ingredients of Order 6 Rule 4 CPC. In the absence of the same, the Courts below, rightly so, refused to entertain the claim and I do not intend to differ with the findings rendered by the Courts below as the same are based upon correct appreciation of fact and law, much less, no substantial question of law arises for consideration. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 08, 2016

Pankaj*

Whether reasoned/speaking

Yes

Whether reportable

No