IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2741 of 2014 (O&M)
Date of Decision: 11.01.2016

Ranjit Singh

......Appellant

Vs

Ram Sarup and another

.....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Raj Kumar Gupta, Advocate
for the appellant.

Mr. Sanjay Gupta, Advocate
for the respondent No.1.

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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?***

RAJ MOHAN SINGH, J

[1]. Defendant No.1 is in second appeal against the judgment and decree dated 05.02.2014 passed by Additional District Judge, SAS Nagar, Mohali whereby judgment and decree dated 15.06.2011 passed by Additional Civil Judge (Sr. Divn.) Kharar was set aside thereby allowing the appeal of the plaintiff and decreeing the suit with costs throughout.

[2]. Plaintiff-Ram Sarup filed a suit for declaration to the effect that registered sale deed dated 01.06.2000 is illegal, null

and void, fraudulent and is not binding upon his rights. Plaintiff also sought relief of permanent injunction restraining the defendants from alienating the suit land in any manner.

[3]. Plaintiff pleaded that he was the proprietor of the village and was also co-sharer in the *shamlat* land. Defendants conspired together to acquire the land in question by deceitful means and they entered into some secret alliance. The impugned sale deed was claimed to be result of fraud and fabrication as the plaintiff did not receive any consideration of Rs.4,80,000/- as mentioned in the sale deed. Defendants never came to the spot and plaintiff was in possession of the suit land. Plaintiff never appeared before the Sub-Registrar,nor presented the sale deed before the Sub-Registrar for attestation. None of the witness from the village attested the sale deed. The *Lambardar* who allegedly attested the transaction was habitual signatory of documents. Defendant No.2 was also shows as witness to the sale deed who was a property dealer and he connived with the Sub-Registrar in committing fraud with the plaintiff. With this background the suit came to be filed.

[4]. Suit was contested by the defendant No.1 by controverting all the allegations. It was alleged that plaintiff executed the sale deed dated 01.06.2000 in favour of defendant No.1 and defendant No.2 was the witness of the sale deed. The

sale deed was valid and was a legal document. The same was executed by the plaintiff after taking Rs.4,80,000/- as consideration of sale in cash.

[5]. Defendant No.2 also contested the suit by controverting the allegations in the plaint. Defendant No.2 alleged that the plaintiff had executed sale deed dated 01.06.2000 in favour of defendant No.1 and defendant No.2 has acted as witness in the sale deed. There was no secret alliance between anyone. Plaintiff along with 18 other persons entered into agreement with the defendant No.2 on 23.10.1996 for sale of 207 acres of land and took an earnest amount of Rs.8,28,000/-. They also agreed to execute the sale deed six months after the partition, but never filed any application for partition in the Court. He also alleged that except getting the land partitioned, they started selling their shares to other persons and then plaintiff filed the suit in the Court and because of death of some *khewatdars* the suit was withdrawan. The escalation of prices made plaintiff and other *khewatdars* to put pressure on the defendant to back out from the agreement. The sale deeds, if, any executed by *khewatdars* was an independent act and they cannot backtrack from the agreement with the defendants. There was no sale deed in favour of answering defendant No.2 till date.

[6]. After filing replication, both the parties went to trial on the following issues:-

> *"1. Whether the plaintiff is entitled to the declaration as prayed for? OPP.*
>
> *2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP.*
>
> *2A. Whether the plaintiff is estopped from filing the present suit by his act and conduct? OPD-1*
>
> *3. Relief."*

[7]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[8]. Trial Court dismissed the suit vide judgment and decree dated 15.06.2011 by returning the findings against the plaintiff under issues No.1 and 2. Findings under issue No.2-A was returned against the defendants and in favour of the plaintiff.

[9]. In appeal filed by the plaintiff, the lower Appellate Court accepted the same thereby decreeing the suit of the plaintiff with costs throughout and the sale deed dated 01.06.2000 registered in the office of Sub-Registrar was declared to be illegal, null and void without consideration and fraudulent. Suit for permanent injunction was also decreed thereby restraining the defendants from alienating the suit property in any manner.

[10]. Defendant No.1 has preferred to file the present appeal by impleading defendant No.2 as proforma respondent.

[11]. Appellant has formulated following substantial questions of law in para no.10 of the grounds of appeal:-

"(i) Whether the impugned judgments and decree passed by the ld. First Appellate Court, is totally illegal, without jurisdiction, perverse, result of misreading and non-appreciation of evidence and not sustainable in the eyes of law in the facts and circumstances of the case?

(ii) Whether a registered sale deed could be avoided on the simple plea of fraud without pleading particulars of fraud as per requirement of Order 6 Rule 4 CPC and without adducing evidence in that regard?

(iii) Whether the findings recorded by the ld. First Appellate Court that sale deed in question is without consideration, is based on no evidence, perverse, misreading and non-appreciation of evidence and is barred by section 91 & 92 of the Evidence Act?

(iv) Whether the registered sale deed in question carries a presumption of truth u/s 58, 59, 60 of the Indian Registration Act that it is validly executed and the transactions in question is a genuine one in the facts and circumstances of the case?

(v) Whether the non-framing of proper issues arising out of pleadings of the parties materially prejudiced the rights of

defendants/appellants resulted into failure and miscarriage of justice, in the facts and circumstances of the case?

(vi) Whether the simple suit for declaration without seeking consequence relief of possession is legally maintainable in the facts and circumstances of the case?

(vii) Whether the Trial Court judgment can be set aside by the ld. First appellate Court without dealing and considering with the reasons given by the trial Court?

(viii) Whether the defendant/appellant is afforded proper opportunity of adducing evidence and dismissal of application for adducing addl. Evidence amounts to denial of opportunity to adduce evidence in the facts and circumstances of the case?

(ix) Whether the judgment passed by the ld. First appellate Court without recording issue-wise findings and without considering and appreciating the pleadings, evidence and the written submissions made by the counsel for the appellant, can be termed as a judgment under law within the requirement of Order 41 Rule 30-31 CPC?

(x) Whether grave manifesto injustice has been caused to the defendant/appellant?"

[12]. I have heard learned counsel for the parties.

[13]. The impugned sale deed dated 01.06.2000 was

allegedly executed by plaintiff in favour of defendant No.1 for a total sale consideration of Rs.4,80,000/-. The said sale deed is claimed to be fraudulent on the ground that plaintiff never appeared before the Sub-Registrar and no consideration was passed over to him. The sale deed Ex.PW4/A did not carry the thumb impressions of the plaintiff at the relevant spaces and execution of sale deed was denied by the plaintiff firstly on the ground that no consideration was ever passed over to him and secondly his signatures were obtained fraudulently by defendant No.1. The contract without consideration is void and is not enforceable in law in terms of Section 25 of the Indian Contract Act. The plaintiff has specifically pleaded that he never executed the sale deed in question, nor any consideration was passed over to him prior or at the time of registration of the sale deed.

[14]. Defendant No.1 appeared in the witness box and submitted that he had paid the consideration to the plaintiff prior to registration of the sale deed. In the cross-examination defendant No.1 stated that at the time of payment he alone had approached the plaintiff and one other person was also present there whose name he did not know. He also admitted that sale consideration was paid by way of receipt, the original of which was retained by him and photocopy was given to the plaintiff. On confronted as to who had witnessed the said receipt, he

pleaded ignorance and could not remember the name of that person. The production of receipt could not be made on the ground that both original and photocopy were destroyed by the plaintiff himself. The payment of Rs.4,80,000/- could only be proved by cogent evidence in the form of receipt that too was to be proved in terms of its execution. No sane person would advance such a payment without registration of the transaction and would allow the vendor to destroy the evidence in the manner as suggested by defendant No.1. The defendant No.1 was required to preserve the receipt to prove passing of consideration.

[15]. Even with regard to source of sale consideration, he stated that a sum of Rs.3.45,000/- was received by him on the death of his father and the remaining amount was available with him at home. The father of defendant No.1 was died in the year 1992 leaving behind defendant No.1 and other family members who were also entitled to the amount. The explanation with regard to source of income could not be substantiated on the basis of his deposition to the effect that the amount was in fixed deposit in Union Bank or State Bank in Moga. At the time of registration of the sale deed dated 01.06.2000, he was not in possession of sale consideration and same was never paid to the plaintiff.

[16]. The plaintiff's case that he never appeared before the Sub-Registrar on 01.06.2000 and his thumb impressions were obtained on sale deed by defendant No.1 by playing fraud on the ground that he was brought by defendant No.2 Rajinder Singh and deed writer Bittu. Both represented to the plaintiff that his thumb impressions were required on a sale deed with regard to land of one Chetu of the village and they obtained his thumb impressions at two three places on the blank papers which were later on converted into sale deed dated 01.06.2000.

[17]. In order to substantiate his stand the plaintiff got examined Hirda Ram as PW-1, who had attested the sale deed. The plaintiff stated that on the request of defendant No.2 he had appended his signatures on the sale deed which was never registered in his presence because he never appeared before the Sub-Registrar. The statement of the witness revealed that he never attested the presence of the plaintiff in the office of Sub-Registrar. Defendant No.2 did not enter into the witness box.

[18]. The testimony of DW-2 Balwinder Singh, the then Sub-Registrar and DW-3 Ashwani Kumar Advocate scribe of the sale deed further highlighted that the sale deed Ex.PW4/A was never registered in the office of Sub-Registrar in the manner as claimed to have been registered. The normal course at the time

of attestation of sale deed by witness is to show the complete particulars of the witness. DW-2 Balwinder Singh the then Sub-Registrar admitted that sale deed was attested by one Hirda Ram, Lambardar, but the same was silent viz-a-viz. of other particulars of Hirda Ram as to his parentage and other nomenclature viz. address and stamp of the witness etc. The witness also admitted that the scribe DW-3 Aswhani Kumar had not given serial number in the register where the sale deed was entered. The explanation of the scribe that he being a law graduate was not maintaining the register and also do not keep the record with regard to fee taken by him in scribing the documents further made the transaction suspicious. The scribe was shown to be working at Kharar, but the sale deed in question was scribed at village Majri. The circumstances in which witness went to Majri for scribing the document have not come to fore by means of any cogent evidence.

[19]. The circumstances in which the sale deed was scribed, executed and registered were suspicious and only pointed towards fraud which was committed upon the plaintiff. The execution of lawful document has to be proved by way of passing of lawful consideration and delivery of possession. The scribe of the document should have entered the instrument in his register maintained by him in due course of business. The

sale deed should have carried complete particulars of the attesting witness where the execution of sale deed has been denied. The same has to be proved in terms of Section 68 of the Indian Evidence Act by examining the attesting witness. Hirda Ram one of the attesting witness, who was examined as attesting witness could not show sufficiency to prove due execution and in such circumstance second attesting witness was essential for examination, but for the reasons best known to the defendant, the second witness was not examined, although he was arrayed as defendant No.2. There cannot be any direct evidence to prove fraud, but the same has to be visualized in terms of circumstances of the case. The existence of such circumstances pointed towards fraud committed upon plaintiff by the defendants and also by the then Sub-Registrar. The impugned sale deed dated 01.06.2000 was on account of passing of no consideration and sale without consideration is a nullity.

[20]. The attesting witness Rajinder Singh was also impleaded as defendant No.2 and he also filed written statement in favour of defendant No.1. His non-examination in the case remained un-explained. The statement of Hirda Ram PW-1 the second attesting witness was not sufficient to prove the registration of sale deed and the defendant No.1 inasmuch

as the statement of Hirda Ram was specifically to the effect that consideration was not passed over in his presence. No payment was made before the Sub-Registrar, rather statement of defendant was made to the effect that payment was made to the plaintiff two days prior to the execution of the sale deed. The story of receipt has its own story to explain, no receipt has come forth on record, nor any witness was examined in respect of payment. Name of someone was suggested before whom payment was allegedly made, but that person has not been examined by the defendants. Non-examination of Rajinder Singh was the key factor. The effort was made for adducing additional evidence for permission to examine Rajinder Singh, who was attesting witness of the sale deed, but the Additional Civil Judge (Sr. Divn.), Kharar dismissed the application of the defendant for examination of Rajinder Singh as witness vide order dated 21.03.2011. Despite the order having passed, no revision was filed against the said order, nor the same was assailed before the lower Appellate Court. In para No.7 of the grounds of appeal a reference has been made before this Court that order dated 21.03.2011 is totally illegal and without jurisdiction. No application for additional evidence was filed before the lower Appellate Court, nor before this Court. In the absence of any such prayer no indulgence can be granted to the appellant to examine Rajinder Singh by means of any additional evidence. Even otherwise additional evidence cannot be used as tool to fill lacuna in the case of the defendant No.1.

[21]. Since execution of sale deed and passing of consideration have not been proved on record, therefore, substantial questions of law as formulated by the appellant do not arise for consideration in any manner. The impugned judgment cannot be termed as illegal or perverse or the result of any misreading of evidence. In the absence of passing of consideration and the evidence brought on record, the commission of fraud is apparent on record. Therefore, questions No.(i) and (ii) do not arise. Question No.(iii) is rested upon the passing of consideration for which the alleged receipt could not be produced by the defendant No.1 on record. No such presumption can be attached to sale deed once its execution could not be proved by the defendant No.1 in terms of Section 68 of the Evidence Act and testimonies of Hirda Ram PW-1 was not sufficient to prove the valid execution of sale deed. Second attesting witness was not examined and even defendant No.1 could not prove the factum of payment of consideration to the plaintiff. Therefore, question No.(iv) does not arise.

[22]. Proper issues have been answered in the case, therefore, question No.(v) has no application in the context of

non-framing of any issue or resultant failure or mis-carriage of justice to defendant No.1. With regard to question No.(vi) suit for declaration of permanent injunction is maintainable in the form of present suit.

[23]. The other question Nos.(vii) and (viii) do not arise as these questions cannot be terms as questions of law much less substantial questions of law. Findings under issues No.1 and 2 have been lawfully reversed and, therefore question No.(xi) has no application. Resultantly, there is no misreading of evidence in the case and the impugned judgment passed by the lower Appellate Court cannot be termed as having vitiated on account of any perversity, therefore, question No.(x) cannot be answered in the manner as claimed by the appellant.

[24]. In the light of aforesaid proved facts, I am of the view that no interference can be made in the impugned judgment and decree passed by the lower Appellate Court. Consequently, this appeal is found to be totally bereft of merit and the same is accordingly dismissed.

January 11, 2016 **(RAJ MOHAN SINGH)**
Atik **JUDGE**