

**CM No.13521-C of 2016 in/and
RSA No.6493 of 2014**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

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**CM No.13521-C of 2016 in/and
RSA No.6493 of 2014
Date of Decision: November 03, 2016**

RAM KISHAN AND OTHERS

-APPELLANTS

VS

STATE OF HARYANA AND OTHERS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Nishant Raj, Advocate
for the appellants.

RAJ MOHAN SINGH, J. (ORAL)

CM No.13521-C of 2016

This appeal was dismissed for non-prosecution on 26.08.2016. Today, I have heard learned counsel for the appellants to some extent and intend to restore the same in view of the fact that learned counsel for the appellants is ready for arguments.

Application is allowed. The appeal is ordered to be restored to its original number.

Main case

{1}. Plaintiff is in second appeal in a suit for declaration, possession and permanent injunction. Sale deed dated 27.06.1986 was assailed by the plaintiff on the ground that

father of the plaintiff namely Jugga was the original allottee to the surplus land. Allotment was made on 01.12.1977 and allotment letter was issued on 19.05.1978. Plaintiff alleged that Jugga never deposited the allotment money and he ultimately died on 13.08.1999.

{2}. Plaintiff further asserted that the plaintiff No.3 contacted defendant No.3 for delivery of possession of the allotted land. Plaintiff No.3 came to know that the aforesaid Jugga allegedly sold away the land in question to defendants No.4 to 7 vide sale deed dated 27.06.1986. The alleged fact was disclosed to plaintiff No.3 on 12.04.2009.

{3}. Challenge was made to the aforesaid sale deed as the consideration of allotment was never paid by Jugga and he was not competent to alienate the suit property in favour of defendants No.4 to 7. Sale deed dated 27.06.1986 was also claimed to be forged and fabricated.

{4}. After completion of pleadings, both the parties went to trial Court on certain issues. Both the parties led evidence. Trial Court dismissed the suit vide judgment and decree dated 14.10.2013 and the same was upheld by the lower Appellate Court who dismissed the appeal vide judgment and decree dated 01.11.2014. That is, how the present appeal came to be filed in this Court.

{5}. Learned counsel for the appellants framed the following questions of law in the appeal:-

- i) Whether Jugga the original allottee of the land in dispute was not competent to sale the allottee land to the respondents no.4 to 7?*
- ii) Whether the form US-4 was not issued in favour of Jugga as he has not deposited the full amount?*
- iii) Whether the appellants have deposited the amount, therefore, the land is liable to be transferred in their favour being the legal heirs of deceased Jugga?*
- iv) Whether the sale deed and mutation in questions in favour of the respondent no.4 to 7 are null and void and the same may be quashed by this Hon'ble Court?*
- v) Whether the impugned judgment and decree passed by the Id. Trial Court is pre-se, illegal and the findings recorded therein are perverse and un-sustainable in the eyes of law?*
- vi) Such other questions as this Hon'ble*

*Court may consider relevant and appropriate
in the facts and circumstances of the case?*

{6}. Questions No.i to iii can be taken up jointly. Vide Ex.DW1/D, a certificate was issued by the Tehsildar showing the deposits made by Jugga during his lifetime. An amount of Rs.298.75 was deposited on 03.10.1986 and an amount of Rs.3118.35 was deposited on 04.02.1986. The entire sale consideration was deposited by Jugga during his lifetime and he was conferred with the title of the allotted land. Thereafter, sale deed dated 27.06.1986 (Ex.DW3/C) was executed by aforesaid Jugga in favour of defendants No.4 to 7. The sale deed was duly scribed by Dharam Singh, Deed Writer (DW5) in the suit. Tika Ram was the attesting witness who testified the factum of sale deed while appearing as DW6. The execution of sale deed was duly proved on record.

{7}. Since, the initial burden was discharged by the defendant by proving due execution of sale deed, therefore, the onus shifted upon the plaintiff to prove plea of alleged fraud. Fraud has to be treated like a criminal trial and the same has also to be pleaded and proved. No evidence was led by the plaintiff to prove allegation of fraud in respect of execution of sale deed. In view of aforesaid, questions no.i to iii have to be negated as there was no evidence on record to prove that

Jugga was not competent to execute the sale deed dated 27.06.1986. Even otherwise, once the plea of the plaintiff was that Jugga was not competent to execute the sale deed, then how plaintiff can substitute capacity of Jugga being allottee of the land. In that eventuality, the suit land would vest in State free from all encumbrances.

{8}. Question no.iv can be appreciated inasmuch as that Jugga was found to be absolute owner of the property having deposited the sale consideration during his lifetime. The sale deed executed by Jugga in favour of defendants No.4 to 7 is also hit by Section 58 of the Evidence Act. A presumption is attached to a registered document and in the absence of any rebuttal thereto, plaintiff cannot be permitted to breathe hot and cold in the same breathe. Plaintiff has no independent right over and above Jugga. Once the execution of sale deed has been proved with reference to scribe and attesting witnesses, the onus was rightly shifted upon the plaintiff to prove allegation of fraud and fabrication.

{9}. Since no evidence was led by the plaintiff, questions no.iv, v and vi cannot be appreciated. The findings recorded by both the Courts below cannot be held to be perverse on that count as well.

{10}. No lawful point worth consideration is involved in the present appeal. Accordingly, the present appeal is dismissed.

(RAJ MOHAN SINGH)
JUDGE

November 03, 2016

jyoti Y.

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No