

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.1109 of 2016(O&M)

Date of Decision:31.8.2017

Smt.Sehnaj

...Appellant

Versus

Smt.Samina and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Sudhanshu Makkar, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful defendant No.2 is in the regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit for declaration and injunction filed by the plaintiffs was decreed by the learned trial court, vide impugned judgment and decree dated 13.8.2015 and first appeal of defendant No.2 was also dismissed by the learned Additional District Judge, vide impugned judgment and decree dated 27.11.2015, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by the learned first appellate court in para No.2 of the impugned judgment, are that defendant No.1 was owner of agricultural land bearing khewat/khasra No.155/177, Rect. No.28 Killa No.2/1 (5-12), 8 (9-4), 14 (3-18) and Rect No.28, Killa No.13 (8-0) to the extent of ½ share which comes to 4 kanal 0 marla, total area 22 kanal 14 marla, situated within the revenue estate of village Sonkh, Tehsil Nuh, District Mewat. It was alleged that Akhtar Hussain i.e. husband of defendants no.2 was having an evil eye over the suit land and he wanted to

forcibly grab the suit land on the false assurance of purchasing it. It was submitted that the husband of defendant No.2 even extended threats to the husband of plaintiff No.1 i.e. defendant No.1, that if the suit land was not transferred in their names, they would get the same transferred forcibly. It was further submitted that defendant No.1 disclosed the said facts to his other family members and also convened a Panchayat in this regard. It was next submitted that due to the threats of husband of defendant No.2, defendant No.1 executed a gift deed bearing No.1602 dated 18.07.2012 in favour of plaintiffs and delivered the actual possession of the suit property to the plaintiffs. It was further submitted that after laps of sometime, Akhtar and his son Anwar Salim succeeded in getting executed sale deed from defendant No.1 in favour of defendant No.2 bearing Sr. No.1733 dated 30.07.2012. It was next contended no sale consideration ever passed from defendant No.2 or his family members to defendant No.1 and the sale deed bearing vasika No.1733 dated 30.07.2012 was a result of a criminal conspiracy. It was further stated that sale deed bearing No.1733 dated 30.07.2012 was illegal, null and void and was not binding upon the valuable rights of the plaintiffs which accrued in their favour by virtue of gift deed bearing document no.1607 dated 18.07.2012. It was also submitted that now defendant No.2 on the basis of impugned sale deed was threatening to alienate the suit land and to dispossess the plaintiff from the suit land.

Having been put to notice, defendant No.1 appeared and filed his written statement, admitting the claim of the plaintiffs to be correct. However, defendant No.2-appellant filed her contesting written statement, raising more than one preliminary objections, claiming herself to be a bonafide purchaser. On completion of pleadings of the parties, learned trial

Court framed the following issues:-

- i) Whether the sale deed bearing vasika No.1733 dated 30.07.2012 executed by defendant No.1 in favour of defendant No.2 and its subsequent mutation are illegal, null and void and same are not binding upon the valuable rights of the plaintiffs and same is liable to be set aside? OPP
- ii) If issue no.1 is proved, whether the plaintiffs are entitled to a decree of declaration on the grounds as alleged? OPP
- iii) If issues No.1 and 2 are proved whether the plaintiffs are entitled to a decree of permanent injunction on the ground as alleged? OPP
- iv) Whether the suit is not maintainable? OPD
- v) Whether the plaintiffs have no cause of action or locus standi to file the suit? OPD
- vi) Whether the plaintiffs have concealed true and material facts from the court and have not come with clean hands? OPD
- vii) Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiffs have duly proved their case by producing cogent and convincing evidence. Accordingly, suit for declaration and injunction filed by the plaintiffs was decreed, vide impugned judgment and decree dated 13.8.2015. Feeling aggrieved, defendant No.2 filed her first appeal, which also came to be dismissed by the learned first appellate court by passing the impugned

judgment and decree dated 27.11.2015. Hence this regular second appeal, at the hands of unsuccessful defendant No.2.

Heard learned counsel for the appellant.

It is a matter of record and not in dispute that defendant No.1 suffered a gift deed No.1602 dated 18.7.2012 in favour of the plaintiffs. After having suffered gift-deed in favour of the plaintiffs, defendant No.1 was left with no power or authority to execute the sale-deed No.1733 dated 30.7.2012 in favour of defendant No.2. The entire case of appellant-defendant No.2 was based on this sale-deed dated 30.7.2012, which would not confer any kind of right or title on the defendant No.2-appellant because her vendor was not competent to suffer this sale-deed. However, both the learned courts below, while passing their respective impugned judgments and decrees, left it open to the appellant to sue her vendor-defendant No.1, in accordance with law. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

It is also not in dispute that defendant No.2-appellant did not file any counter claim. She did not challenge the validity of gift-deed No.1602 dated 18.7.2012 executed by defendant No.1 in favour of the plaintiffs. Once this gift-deed, which was earlier in point of time, has gone unchallenged at the hands of the appellant, she was bound to fail and has been rightly non-suited by both the learned courts below, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

It is the settled proposition of law that nobody can transfer a

better title than he himself had before executing the sale-deed in favour of his vendee. As noticed hereinabove, peculiar fact situation obtaining on record in the case in hand was that after execution of the gift-deed No.1602 dated 18.7.2012 by defendant No.1 in favour of the plaintiffs, he was left with no ownership rights which might have been transferred by him in favour of defendant No.2-appellant, by way of sale-deed dated 30.7.2012. Appellant ought to have been more careful and vigilant before purchasing the suit property. In this view of the matter, plaintiffs cannot be made to suffer for none of their fault. The suit of the plaintiffs was rightly decreed by both the learned courts below and the impugned judgments and decrees deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in para of its impugned judgment, which deserve to be noticed here, read as under:-

“On the background of the case law, it has been observed by this court that property was transferred by the respondent no.5 in favour of respondents no.1 to 4 by way of registered gift deed vide deed 12.07.2012. It is a registered document. Therefore, it is a notice to the whole world the gift deed Ex P1 has executed. As it has come in the evidence of DW1 that he had enquired from the patwari and clerk of the registrar office but they have not been examined. Therefore, it cannot be said from any stretch of imagination that purchaser had visited or inspected the property before purchase in the office of Sub Registrar. Mere not entered of the mutation in favour of respondents no.1 to 4 does not divert the plaintiff

from title over the suit property.

“The case law produced by the learned counsel for the defendant/appellant is distinguishable as there was not earlier registered document. Moreover, learned counsel for the appellant has failed to show any illegality in the judgment and decree passed by the learned lower court. Perusal of the sale deed shows that respondent no.5 executed sale deed Ex DW1/C on 30.07.2012 in favour of the appellant of a sale consideration of Rs.42 lacs meaning thereby that at the time of execution of sale deed, respondent no.5 was not having any title over the suit property and despite having notice and knowledge of this fact he intentionally executed the sale deed in favour of the appellant. Learned counsel for the appellant has categorically stated that possession was not delivered to the respondent no.1 to 4 by the respondent no.5. PW2 Samina has categorically stated in her examination in chief ExPW2/A that gift deed x.P1 was executed in the present of witnesses namely PW1 Ram Chander, Lambardar that appellant interfered in the peaceful possession of the plaintiffs/respondents no.1 to 4. In this manner learned trial court has rightly held that sale deed no.1733 dated 30.07.2012 executed by respondent no.5 in favour of appellant and its subsequent mutation entries are illegal, null and void. Learned trial court has given observation in this judgment that from the act and conduct of the respondent no.5, it can be safely presumed that sale deed bearing no.1733 dated 30.07.2012 was got executed by him in favour of defendant no.2/appellant with a sole to defraud defendant no.2/appellant and to dupe defendant no.2/appellant for a sum for Rs.42 lacs. The act and conduct of the respondent no.5 in executing sale deed in favour of appellant despite having notice and knowledge he was no more owner of the suit property amounts to clear cut case of cheating and defendant/appellant was at liberty to seek remedy in a criminal law.

During the course of arguments, learned counsel for the

appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in *Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286* and *Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179*.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

31.8.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No