

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1239 of 2016
Date of decision: 17.01.2017

Satbir Singh

... Appellant

Vs.

Mukesh Rani and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Deepak Hooda, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned judgment and decree dated 17.12.2015 passed by learned Additional District Judge, Jind, whereby the impugned judgment and decree dated 29.02.2012 passed by learned trial Court, dismissing the suit for declaration of the plaintiff and allowing the counter-claim of defendant No.1 were upheld, dismissing his first appeal, plaintiff has approached this Court by way of instant regular second appeal.

Brief facts of the case, as noticed by learned trial Court in para 1 of its impugned judgment, are that the plaintiff filed the suit against defendants on the grounds that plaintiff was owner and in joint possession of agriculture land total measuring 98 kanals 16 marlas comprised in Khewat No.66 Khata No.105 vide jamabandi for the year 2004-2005 situated in area of village Alewa, Tehsil and District Jind. Defendants had no concern with the share of plaintiff. Land

mentioned in sale deed under challenge would be mentioned as suit land henceforth in the plaint.

It was pleaded that defendant No.1 is wife of defendant No.2, defendant No.3 is doing the work of property dealer in Village Alewa who is resident of adjoining village Khanda, while defendants No.4 and 5 belong to village of defendant No.3.

It was pleaded that about three months ago defendant No.2 contacted plaintiff for sale of agriculture land to a third party on the basis of commission. After some negotiation, an agreement was got executed through Sanjay, between plaintiff and a third party whose name was Gurnam resident of village Gharonda, along with Ved Kundu who was a partner in Petrol Pump Alewa. Rs.25000/- were paid to plaintiff as earnest money by Sanjay defendant. After one month, Sanjay defendant told plaintiff that this agreement was to be cancelled and land would be sold to Rajbir son of Paras Pandit, resident of village Khanda who is defendant No.5 and Rs.25000/- would be repaid to Gurnam. Again Rs.5000/- were paid to plaintiff and some writing was executed, contents of which were not known to plaintiff. However, plaintiff was told at the time of both agreements that rate of land was fixed at the rate of Rs.15,70,000/- per acre.

It was pleaded that defendants No.1 to 4 hatched a conspiracy to get the suit land transferred in name of defendant No.1 by fraud. On 23.01.2008, defendant Sanjay along with his partner and driver Pardeep came to the house of plaintiff and took plaintiff in their car. Plaintiff was brought at Jind in a hotel and restaurant near Rani Talab, Jind. Plaintiff was served with meal and after that plaintiff was taken to office of Sub Registrar, Alewa. In meal some intoxicant was mixed by Sanjay defendant. Plaintiff was not fully aware

of sale transaction in the office of Sub Registrar, Alewa. Sanjay told that price of land would be paid after execution and registration of sale deed and took the responsibility of the payment of sale consideration. Plaintiff protested that sale deed in favour of defendant No.1 would be executed subject to condition that price of one acre is taken to be Rs.20,00,000/-. Defendant agreed to the condition and sale deed was executed but payment was not paid at the time of execution of sale deed.

After execution of sale deed, defendant Sanjay took plaintiff in his car and in presence of Anil son of Ramesh and Ramesh Lambardar made payment of Rs.4,00,000/- near S.R. Office. After that plaintiff was brought to Jind and Sanjay defendant demanded Rs.50,000/-. Plaintiff was left at Jind. Sanjay defendant promised to pay remaining amount in next one or two days.

It was pleaded that one the next day, Sanjay defendant and defendant No.2 flatly refused to make payment of the balance consideration. Family members approached defendants and they admitted the fact that they will make payment of the amount to plaintiff. They admitted that Rs.4,00,000/- was paid to plaintiff and cleared the bank loan of plaintiff.

It is the case of plaintiff that sale deed No.1418 dated 23.01.2008 is wrong, illegal, null and void and not binding on the rights of the plaintiff and therefore, liable to be set aside on the grounds that sale deed is based on fraud and misrepresentation, no consideration was paid to plaintiff, there was no agreement between plaintiff and defendant No.1, plaintiff is not owner of the land to the extent as mentioned in the sale deed measuring 20 kanal 12 marlas, sale deed in question was executed by defendant No.1 to defendant No.3 despite the agreement with defendant No.5, possession of suit land was never delivered to defendants and plaintiff was under the influence of intoxicant at the

time of execution of sale deed.

Plaintiff requested defendants several times for getting set aside the sale deed but they finally refused on 29.01.2008. Hence suit was filed for decree of declaration to the effect that plaintiff was owner and in joint possession in the agriculture land mentioned in the head note and para No.1 of the plaint, total measuring 98 kanals, 16 marlas and sale deed No.1418 dated 23.01.2008 is based on fraud, misrepresentation waste paper and not binding on the rights of the plaintiff as no consideration was passed from defendants to plaintiff and therefore, liable to be set aside and mutation proceedings and revenue entries incorporated thereupon were also liable to be rectified and by decree of permanent injunction, defendant No.1 be restrained from alienating the disputed property for making any type of interference in the joint possession of plaintiff over the suit land.

Having been served in the suit filed by the plaintiff, defendants put appearance and filed their contesting written statement. Defendant No.1 filed her counter-claim for recovery of amount of Rs.2.00 lacs along with interest @24% per annum. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is owner and in joint possession of the disputed property on the ground taken in the plaint? OPP
2. Whether sale deed No.1418 dated 23.01.2008 and mutation sanctioned thereupon are wrong, illegally, null and void and liable to be set aside? OPP
3. Whether defendant No.1 is entitled by way of counter-claim to recover from plaintiff an amount of Rs.1,09,200/- along with damages if any from the plaintiff? OPD

4. Whether the suit is not maintainable in the present form?
OPD.
5. Whether the defendant No.1 is bonafide purchaser of the
disputed property?OPD.
6. Relief

In order to prove their respective stands taken, both the parties led their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that whereas the plaintiff failed to prove his case, defendant No.1 was able to prove her counter-claim. Accordingly, suit for declaration filed by the plaintiff was dismissed, whereas the counter-claim of defendant No.1 was partly allowed for a decree of recovery of amount of Rs.1,09,200/- along with interest @6% per annum, from the date of filing of the suit till realization of decretal amount, vide impugned judgment and decree dated 29.02.2012. Plaintiff filed his first appeal, which came to be dismissed by the learned First Appellate Court vide impugned judgment and decree dated 17.12.2015. Hence this second appeal at the hands of plaintiff.

Heard learned counsel for the appellant.

It is a matter of record that it was pleaded and argued case on behalf of the plaintiff-appellant that the sale deed Ex.D3 was the result of fraud and misrepresentation. No consideration was passed on to the plaintiff-appellant for execution of the sale deed, which was, in fact, got executed from the plaintiff under the influence of intoxicant. However, plaintiff-appellant miserably failed to substantiate his abovesaid stand taken in the pleadings, by leading cogent evidence.

It is the settled proposition of law that the party who alleges fraud,

heavy onus would be on him to prove it. In the present case, since the appellant was plaintiff and he has set up the plea of fraud against the defendants, a heavy onus was on the plaintiff to prove his plea of fraud by leading the worth reliance evidence. However, the plaintiff-appellant failed to discharge his onus on material issues No.1 and 2, referred to hereinabove, and the learned trial Court was well within its jurisdiction to dismiss the suit of the plaintiff and decreeing the counter-claim of defendant No.1, thus, the impugned judgment and decree passed by learned trial Court was rightly upheld by learned First Appellate Court.

The facts as well as evidence brought on record were duly reconsidered by learned First Appellate Court, before arriving at its just conclusion, by recording cogent findings, which have been found based on sound reasons. It was duly proved by the defendants that no fraud was played with the plaintiff. Due consideration was passed on to the plaintiff. He executed the sale deed in question on his own free will. It was also held that once the plaintiff appeared before the Registrar at the time of execution and registration of the sale deed in question, without raising any kind of protest regarding alleged fraud, the sale deed was a genuine document.

The factually correct and legally justified findings recorded by learned First Appellate Court in para Nos.25 to 28 of the impugned judgment, which deserve to be noticed here, read as under: -

“Further, the fraud, which is contemplated in proviso (1) to Section 92 of Evidence Act is at the very inception a fraud that vitiates the transaction itself and not any subsequent conduct or representation on the part of the party or his representative in interest, which, however, reprehensible it may be, is not enough to

vitiate the transaction. The evidence of such conduct or representation, therefore, cannot be led within the meaning of proviso (1) to Section 92, Evidence Act.

Moreover, pleas of fraud etc. lost significance after registration of documents as Section 34 of the Registration Act, 1908 makes it a must that the executant or his representative or agent, duly authorized appears before the Registering Officer whereupon the Registering Officer will make inquiries and satisfy himself as provided under sub-section (3) of Section 34 of the Act. Elaborate procedures have been provided under the Registration Act to safeguard against any fraud in the execution of a document. There is a presumption under Section 114 of the Indian Evidence Act that official acts have been performed in accordance with the procedure. Therefore, when a document has been duly registered, there will be a presumption that it has been registered in accordance with the law and onus lies heavily on the person who claims that it was not so. Obviously, the appellant-plaintiff has failed to discharge this onus.

As per as the point of payment of consideration is concerned, which is also the main point of arguments by the learned counsel for the appellant-plaintiff, in the circumstances of this case would only be incidental to the main claim as made by the plaintiff i.e. an incidence to show that since no consideration passed, that tended to prove the main claim of the plaintiff.

It is obvious from the evidence of the respondents-defendants that the consideration amount was paid partly in cash and partly

to clear the loan amount on behalf of appellant-plaintiff after the execution of the documents. Whether or not title could pass without payment of consideration at the time of, or before the execution of documents can be discerned from the averments made in such a document. It is settled law that the question whether title passes on mere execution and registration of a deed or on payment of consideration depended upon the intention of the parties, to be gathered from the deed. It was held in catena of cases that if from the recital of the deed it transpired that the parties had agreed that title would pass to the vendee only after payment off the full consideration money, then if consideration money was not paid at the time of the execution and registration of the deed, the title would not pass to the vendee. If a sale deed recites that the consideration money had been paid, there was nothing to prevent the parties from adducing evidence to show that the recital was untrue and that, in fact, the consideration was not paid. However, in instant case consideration is duly proved by the respondents-defendants, therefore, title passed at the time the registration took place. Further, the learned lower court has rightly observed that the appellant/plaintiff has sold the deficient suit land to the defendant No.1 which is reflected from the revenue record available on the file in the form of Ex.P2 to Ex.P4 and Ex.D11.”

During the course of hearing, learned senior counsel for the appellant, despite making his best efforts, could not substantiate any of his arguments. In fact, there was no sufficient evidence available on record to prove the plea of fraud, because of which learned senior counsel for the appellant was

unable to improve the case of the appellant in any manner. He could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned Courts below, because of which the impugned judgments and decrees deserve to be upheld.

Once the signature of plaintiff-appellant on the sale deed Ex.D3 and his presence before the Registrar at the time of execution and registration of the sale deed have gone undisputed on record, the suit of the plaintiff was bound to fail. The settled proposition of law in this regard is that a person who alleges, must necessarily prove it. In the absence of cogent evidence to prove the plea of fraud, what was left was only the pleadings of the plaintiff, which were not sufficient to prove the allegation of fraud. Self-serving statement of the plaintiff-appellant, in fact, fell short in proving the plea of fraud. Having said that, this Court feels no hesitation to conclude that learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **Gautam Sarup Vs. Leela Jetly and others, 2008 (7) SCC 85** and judgments of this Court in **Santa Singh Vs. Tarsem Singh, 2010 (67) RCR (Civil) 520, Devi Lal Vs. Shokaran and another, 2011 (5) RCR (Civil) 615, Usha and others Vs. Subhash Chander and others, 2014 (5) RCR (Civil) 813** and **M/s Machhi Ram Kishan Singh Sidana, Rice Mills Vs. Sham Singh and others, 2015 (9) RCR (Civil) 506.**

In the present appeal, both the learned Courts have recorded their concurrent findings of fact, which have not been found suffering from any patent illegality, leaving no scope for interference. Learned senior counsel for the appellant could not refer to any question of law, much less substantial

question of law arising in the appeal in hand, warranting interference at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. Involvement of a substantial question of law is sine qua non for entertaining the regular second appeal by this Court. In this regard, reference can be made to law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 present second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant Regular Second Appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

17.01.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No