

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

**RSA No.1690 of 2015
Date of Decision:6.9.2017**

Asha Rani @ Asha Jhanji

...Appellant

Versus

Sujata Kumari and another

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Rajeev Sharma, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful plaintiff is in the regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby her suit for declaration and permanent injunction was dismissed by the learned trial Court, vide its impugned judgment and decree dated 20.8.2010 and her first appeal also came to be dismissed by the learned Additional District Judge vide impugned judgment and decree dated 4.11.2014, 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 2 of the impugned judgment, are that appellant-plaintiff Asha Rani @ Asha Jhanji filed a suit for permanent injunction, restraining the defendants from alienating, selling out, parting with the possession, mortgaging, transferring, gifting out the properties i.e (A) House bearing No. EG-964-B measuring 6 marlas 8 sq.ft. situated at Mohalla Gobindgarh, Railway Road, Jalandhar and (B) One shop measuring one marla approx. forming part of property No.BIX-1/888 situated at Abadi Krishan Nagar

Railway Road, Jalandhar City and suit for declaration to the effect that the sale deeds: (i) document No. 4327/1 dated 19-09-2001 allegedly executed by plaintiff in favour of defendant No.2 with regard to property mentioned in head note (B) above and further sale-deed dated 4-3-2002 document No.8005 with regard to property as mentioned in head note (A) above allegedly executed by plaintiff in favour of defendant No.1, were illegal, null and void, ineffective, result of fraud and same were not binding upon the legal rights of the plaintiff, as detailed in the head note of the plaint.

The plaintiff submitted that she was owner in possession of the suit property, as the same was purchased by her and her name had been duly incorporated in the revenue record in the column of ownership. Defendant No.1 was daughter-in-law of plaintiff as she was the wife of son of plaintiff namely Vikas Mohan Jhanji and defendant No.2 was the real mother of defendant No.1. It was further alleged that due to strained relations with her son namely Vikas Mohan Jhanji and his wife namely Sujata Kumari defendant No.1, plaintiff had already disinherited them and as such defendants were nursing grudge against the plaintiff. It was further averred that with the intervention of the respectables of the locality and relatives, plaintiff was compelled to withdraw her declaration with regard to the disinheritance of her son namely Vikas Mohan Jhanji and affidavit and photographs were taken from the plaintiff under misrepresentation. Ultimately on 19.09.2001 and on 4.3.2002 both the defendants took the plaintiff in the office of Sub Registrar, Jalandhar and they took the signature of the plaintiff on the stamp papers by affixing her photographs and the plaintiff never executed or got registered any sale deed with regard to the

properties mentioned above, nor she had received any amount/sale consideration of the suit property nor delivered the possession. The said sale deeds were forged and fabricated and result of fraud and not binding upon the legal rights of plaintiff. Defendants were openly threatening to alienate the suit property further to some other person to which they had got no right.

Having been put to notice, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiff filed her replication. On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the plaintiff is entitled to permanent injunction as prayed for ?OPP
2. Whether the plaintiff is entitled to declaration as prayed for ? OPP
3. Whether the plaintiff has not approached the court with clean hands, if so its effect?OPD
4. Whether the plaintiff is estopped from filing the present suit?OPD
5. 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 plaintiff has failed to prove her case for want of cogent and sufficient evidence. Accordingly, suit of the plaintiff for declaration and permanent injunction was dismissed by the learned trial Court, vide its impugned judgment and decree dated 20.8.2010. Feeling aggrieved, plaintiff filed her first appeal,

which also came to be dismissed by the learned Additional District Judge by passing the impugned judgment and decree dated 4.11.2014. Hence this second appeal, at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

The entire case of the plaintiff-appellant was revolving around alleged illegality in two sale-deeds dated 19.9.2001 and 4.3.2002 executed by none-else but the plaintiff-appellant herself in favour of the defendants. She challenged the validity of these two sale-deeds Ex.D1 and Ex.D2, raising the plea of fraud. However, the plaintiff-appellant failed to prove her pleaded case, because she was unable to bring on record any relevant and cogent evidence so as to prove her plea of fraud qua these two sale-deeds. In such a situation, the plaintiff was bound to fail. That is what has been held by both the learned courts below, while recording their concurrent findings of facts, leaving hardly any scope to interfere, at the hands of this Court. Having said that, this Court feels no hesitation to conclude that both the learned courts were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

It goes without saying that the plea of fraud is a serious allegation. It is this reason that a heavier onus would be on the person, who raises the plea of fraud. Such an onus was on the plaintiff-appellant in the case in hand. A combined reading of both the impugned judgments and decrees passed by both the learned courts below would make it crystal clear that there was no sufficient evidence available on record brought at the hands of appellant, which may prove her plea of fraud by any stretch of imagination. On the other hand, defendants were able to establish the

validity of both these two sale-deeds suffered by the plaintiff in favour of the defendants. Attesting witnesses of both these two sale-deeds were rightly examined by the defendants as DW-3 and DW-4. Both these witnesses were cross-examined at length by the plaintiff, but nothing adverse could be elicited from either of these two witnesses so as to create any doubt in the credibility of these two material witnesses. Under these undisputed facts and circumstances of the case, it can be safely concluded that both the 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 view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court in **Sri Gangai Vinayagar Temple and another Vs. Meenakshi Ammal and others**, 2015 (2) SCC (civil) 350 (SC), **Punjab Urban Planning and Dev. Authority Vs. M/s Shiv Saraswati Iron and Steel Re-Rolling Mills**, 1998 AIR (SC) 2352 (SC), **Gautam Sarup Vs. Leela Jetly and others**, 2008 (7) SCC 85 (SC), **Zarina Siddiqui VS. A.Ramalingam alias R.Amarnathan**, 2015 (1) SCC 705 (SC), **Swarn Singh Vs. Swarn Kaur and others**, 2004 (2) RCR (civil) 505 (P&H), **Santa Singh Vs. Tarsem Singh**, 2010 (67) RCR (civil) 520 (P&H) and **M/s Machhi Ram Kishan Singh Sidhana, Rice Mills Vs. Sham Singh and others**, 2015 (9) RCR (civil) 506.

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 19 of its impugned judgment, which deserve to be noticed here, read as under:-

“As per version of the appellant/plaintiff, the defendants fraudulently got two sale deed executed from her on 19.09.2001 and 04.03.2002 but these sale deeds have been duly proved by the respondents/defendants by examining DW3 Naranjan Dass, who is attesting witness of sale deed dated 04.03.2002 Ex. D1 and DW4 Surjit Rai who is attesting witness of the sale deed dated 19.09.2001 Ex. D2. Both these witnesses have been cross-examined at length by the plaintiff but nothing could be brought out in their respective cross-examination from which it can be said that both these witnesses were not present at the time of execution of the sale deed and consideration amount was not paid in their presence. Further more, the appellant has failed to bring any evidence on the file to show her enmity with these two witnesses, on account of which they have deposed falsely against the plaintiff and in favour of defendants. It being so, both the sale deeds have been duly proved by the defendants.

Appellant, being the plaintiff, onus was on her to prove her pleaded case. Plaintiff was supposed to stand on her own legs instead of waiting for the alleged weakness of the case of the defendants. To substantiate his arguments in this regard, learned counsel for the appellant placed reliance on the cross-examination of defendants but failed to point out any patent illegality or perversity in the evidence brought on record by the defendants and rightly so, it being a matter of record. Despite making his best efforts, learned counsel for the appellant could not make any improvement in the case of the plaintiff-appellant at this stage because there

was no scope, whatsoever, for any improvement. It is so said because whatever evidence has been brought on record, at the hands of the plaintiff-appellant, was rightly not found sufficient by the learned courts below so as to decree the suit of the plaintiff, which was primarily based on the plea of fraud. Plaintiff miserably failed to prove that, as a matter of fact, any fraud was played on her by the defendants, at the time of execution of the above-said two sale-deeds by the plaintiff in favour of the defendants. In this view of the matter, no fault can be found with the concurrent findings of facts recorded by both the learned courts below and the impugned judgments and decrees deserve to be upheld.

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.

6.9.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

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