

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

RSA No.1764 of 2015 (O&M)

Date of decision : 25.07.2017

Nirmal Kaur

...Appellant

Versus

Chint Kaur (since deceased) through her legal heir Sukhdev Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Manish Joshi, Advocate for the appellant.

ANIL KSHETARPAL, J.

The defendant-appellant in the present Regular Second Appeal is against the judgments passed by the Courts below.

The plaintiff-Chint Kaur had filed a suit for declaration challenging the sale deed dated 09.02.2004. It was claimed that the aforesaid sale deed executed in favour of defendant is void ab-initio, illegal, ineffective and same has been obtained by fraud and misrepresentation.

The defendant appeared and contested the suit. It was claimed that the sale deed was executed in sound and disposing mind for a sale consideration of ₹2,80,000/-.

The learned trial Court after appreciating the evidence available on the file decreed the suit filed by the plaintiff. Appeal filed by the defendant has also been dismissed after re-appreciating the evidence available on the file.

The Courts below have recorded that in this case Chint Kaur, aged about 90 years challenged the sale deed within little over two months of the date of execution of sale deed. The sale deed was executed on 09.02.2004 whereas suit was filed on 12.04.2004. The learned Court further noticed that the defendant is none else than granddaughter-in-law of Chint Kaur. It has further been noticed by the Courts that DW5 Nishan Singh (husband of defendant) has appeared and made self-contradictory statement regarding the arrangement of the amount of sale consideration. The learned Courts have also noticed that since defendant has not put in appearance, therefore, adverse inference has been drawn against the defendant. Taking into consideration these facts, the Courts have decreed the suit filed by the plaintiff. The defendant has filed this present appeal.

Learned counsel for the appellant has submitted that the judgments passed by the Courts below are result of misreading of evidence. Learned counsel has further submitted that sale deed being registered document has a presumption of truth, therefore, the Courts below were wrong in decreeing the suit filed by the plaintiff.

I have considered the submissions and with his help gone through the judgment passed by the Courts below.

In my opinion, there is no misreading of evidence available on the file. Counsel for the appellant has not been able to point out even a single instance where any substantive evidence has been misread.

Still further, it is established on the file that plaintiff was 90 years old on the day the sale deed was executed. The defendant was in a dominating position as she was wife of grandson. Therefore, heavy onus lay

upon the defendant to prove the valid execution of the sale deed. The defendant has not appeared in the witness-box. Her husband Nishan Singh has appeared as DW5. He has not been able to show that any consideration was paid.

The suit in the present case was filed immediately after the sale deed was executed.

No doubt, the sale deed is registered one. There is presumption of genuineness about the execution of the sale deed. However, the Courts have not doubted the due execution. The Courts have set aside the sale deed on the ground that neither consideration is proved nor defendant has been able to discharge the onus which lay heavily on her being in a dominating position.

For the reasons recorded above, I do not find any reasons to interfere with the concurrent findings of fact arrived at by the Courts below. Hence, the appeal is dismissed.

25.07.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No