

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

**RSA No.3476 of 2016
Date of decision:3.3.2017**

Khan Mohammad and another

...Appellants

Versus

Rahisan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Gaurav Sharma, Advocate
Mr.Ashish Sharma, Advocate for the appellants.

RAMESHWAR SINGH MALIK, J. (Oral)

Having failed in both the courts below, defendants have approached this Court by way of present regular second appeal, impugning the judgments and decrees of the learned trial court as well as learned first appellate court, whereby suit of the plaintiff for recovery was decreed by recording concurrent findings of facts.

Succinctly put, facts necessary for decision of the present appeal, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that in the last week of June-2006, Sobat Khan Lambardar (respondent No.2 herein) approached plaintiff/respondent Rahisan and told that appellants wanted to sell their 15 marlas of land situated within the revenue estate of Firozepur-Namak, Tehsil Nuh, District Newat, at a low price, because they were in urgent need of money; that thereafter, respondent No.2 took the plaintiff/respondent and her husband to the appellants, who also told that they were to sell their 15 marlas of land; that subsequently, the appellants and respondent No.2 in collusion with each

other went to respondent No.3 who was Patwari of village; that Patwari of the area handed over copy of jamabandi for the year 2001-02 in order to satisfy that the appellants were co-owners of 15 marlas of land in khewat No.423, Khatoni No.475, rectangle No.62, killa No.29(1-11), to the extent of half share which came to 15 marlas, as such, the appellants agreed to sell their 15 marlas of land for a sale consideration of Rs.3 lacs and the plaintiff/respondent became ready to purchase the same. It was further contended that on 4.7.2006, the appellants executed a registered sale deed in favour of plaintiff/respondent and obtained Rs.3 lac as sale consideration; that the sale deed was registered by appellants in favour of plaintiff/respondent in the office of Joint-Sub-Registrar, Nuh and respondent No.2 had witnessed the execution of sale deed; that the plaintiff/respondent had spent Rs.21,000/- on stamp paper plus miscellaneous expenses; that after getting the copy of sale deed, the plaintiff/respondent went to respondent No.3 for the purpose of mutation but respondent No.3 refused to enter the mutation and told that appellants were owner of only 3 marlas of land and as such the appellants and respondents No.2 and 3 in collusion with each other, got fabricated false revenue record/jamabandi and thereby cheated the appellants as co-owner of half share in the land with a view to cheating the plaintiff/respondent, while in fact, the appellants were owners of 3 marlas of land only; that since the appellants were not competent/authorized to sell 15 marlas of land because they were owners of only 3 marlas of land, all the appellants and respondents No.2 and 3, had committed the offence of cheating and fraud with the plaintiff/respondent; that the plaintiff had already reported the

matter to authority for taking suitable action; that the sale deed dated 4.7.2006, was unauthorized, illegal, in valid so the defendants were liable to refund the entire sale consideration along with interest and damages.

Having been served, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. Defendant No.3 filed his separate written statement. Defendant No.4 did not appear despite service, therefore, he was proceeded against ex parte.

On completion of pleadings of parties, learned trial court framed the following issues.

1. Whether the plaintiff is entitled to recover a sum of Rs.3,00,000/- as prayed? OPP
2. Whether the suit of the plaintiff is not maintainable? OPD
3. Relief.

In order to prove their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has duly proved her case by leading cogent and convincing evidence. Accordingly, suit for recovery filed by the plaintiff was decreed with costs along with interest @ 8% per annum, vide impugned judgment and decree dated 1.12.2013. Dissatisfied, defendants filed their first appeal which also came to be dismissed by the learned first appellate court vide its impugned judgment and decree dated 22.9.2015. Hence this regular second appeal, at the hands of unsuccessful defendants.

Heard learned senior counsel for the appellants.

Entire case of the defendants-appellants was based on technicalities alone. They had no case either on facts or in law as well as in equity. Although, defendants-appellants pleaded forgery and fraud but they did not make any effort to lead any evidence in this regard in spite of the fact that a heavy onus was on them to prove the plea of fraud. Only one witness Taj Mohd. appeared as DW-1 and made a self-serving statement. There was no corroborative evidence. No expert witness like Fingerprint and Handwriting Expert was produced to prove the alleged tempering or forgery. In such a situation, appellants-defendants were bound to fail in defending themselves. That is what has been held by both the learned courts below. Having said that, this Court feels no hesitation to conclude 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.

On the other hand, fraud was sought to be played by the defendants-appellants on the plaintiff. As per Ex.P1, land measuring 15 marlas was sold. However, appellants were admittedly the owner of land measuring 3 marlas only. Plaintiff has duly proved her case by producing cogent and convincing evidence. Plaintiff examined herself as PW-3. There was sufficient corroborative evidence. Mohd. Aasam (Registration Clerk) appeared as PW-1 and Mohd.Akbar appeared as PW-2, who duly proved the document Ex.P1 as an attesting witness thereof. Relevant jamabandi was also produced on record as Ex.P2. There was no contrary documentary evidence produced by the defendants. Under these undisputed facts and circumstances of the case, it can be safely concluded that both the

learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld for this reason also.

It is the settled proposition of law that whosoever asserts, onus would be on him to prove the allegation. In the present case, although defendants alleged forgery, fraud and cheating but they did not lead any evidence in this regard to prove their assertion taken in their pleadings. In the absence of any cogent evidence, documentary as well as oral, pleadings alone will not prove the stand taken by the defendants. Thus, the defendants-appellants have miserably failed to prove their pleaded cases for want of sufficient evidence. In such a situation, the learned courts below rightly decreed the suit of the plaintiff and the impugned judgments and decrees deserve to be upheld, for this reason as well.

Learned first appellate court re-considered and re-appreciated the facts and evidence available on record, before recording its own cogent findings. Relevant findings recorded by learned first appellate court in paras 8 and 9 of its impugned judgment, which deserve to be noticed here, read as under:-

“Learned counsel for the appellant argued that there was tempering in the sale deed and the learned court below had failed to detect this forgery despite there being clear evidence to prove the tempering. Learned counsel has taken this Court through the deposition of PW1, who stated that there was cutting and amount Rs.75,000/- was made Rs.3,00,00/-. It was also argued by the learned counsel for the appellant that the appellant sold out his share to the respondents for the sum of Rs.75,000/- and according to the sale price, stamp paper of

Rs.3,000/- had been purchased. It has been mentioned in Ex.P1, that 15 Marlas land has been sold out. It has not been explained as to who the land measuring 15 Marlas could be sold out by the appellant when the appellant was admittedly owner of only 3 Marlas of land. Such type of forgery/tempering could not be done without the connivance of the officials of the office of Sub-Registrar but no such official has been attributed any such motive and there is no such evidence.

*The original sale deed could not be produced but the certified copy of the same has been produced as Ex.P1 in secondary evidence and the attesting witness of the sale deed Ex.P1, was examined as PW2. The forgery as alleged, should have been brought home but nothing was done by the appellant in this regard. Forgery and fraud has to be pleaded and proved almost like the criminal charges but what to speak of its being proved like a criminal charge, it has not been proved even by pre-ponderance of probabilities. Certain amount of presumption is also attached in favour of a registered document. Nothing has been done to rebut that presumption. It has been held in the case of **Ranganayakamma and another Vs. K.S.Parkash (dead by L.Rs) 2008 (4) CCC 312 (SC)** that there is a presumption that registered document is validly executed. The registered document therefore prima-facie would be valid in law and the onus of proof would be on a person who leads evidence to rebut this presumption. Moreover, the sale of 15 marlas of land has been mentioned in the sale deed Ex.P1 at two different places in digits as well as in words which shows that sale deed was for the 15 marlas of land. Unfortunately, there is no evidence that this much land was with the vendor.”*

The above-said 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. Shekaran and another, 2011 (5) RCR (Civil) 615, Usha and others Vs. Subhash Chander and others, 2014 (5) RCR (Civil) 813, M/s Machhi Ram Kishan Singh Sidana, Rice Mills Vs. Sham Singh and others, 2015 (9) RCR (Civil) 506, RSA No.4070 of 2016 (Chamkur Singh and another Vs. Raghbir Singh and another) decided on 13.1.2017 and RSA No.1239 of 2016 (Satbir Singh Vs. Mukesh Rani and others), decided on 17.1.2017.

During the course of hearing, learned counsel for the appellants could not point out any jurisdictional error or patent illegality in either of the impugned judgments and decrees passed by the learned courts below. He also could not point out 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.***

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 regular second appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been

made out. Consequently, the impugned judgments and decrees passed by the both 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.

3.3.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

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