

Sr. No.103

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

**RSA No. 3553 of 2015(O&M)
Decided on: 7.09.2017**

Ram Achal

.....Appellant

versus

Chander Parkash and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

**Present: Mr. Ajay Singla, Advocate
for the appellant.**

Rajbir Sehrawat, J.(Oral)

CM No. 8626-C of 2015

This is an application filed for condonation of delay of 19 days in re-filing the appeal.

For the reasons mentioned in the application, the delay of 19 days in re-filing the appeal is condoned.

Civil misc application stands allowed.

RSA No. 3553 of 2015

This is an appeal filed by the plaintiff against the concurrent findings recorded by both the Courts below whereby the suit and appeal filed by the present appellant have been dismissed.

The brief facts of the case are that the plaintiff/appellant herein claims that respondent No. 2 had good relations with the plaintiff since both were involved in the profession of construction of houses. Because of that proximity the plaintiff married the sister/relative of respondent No.2. Out of wedlock of the plaintiff and sister of respondent No. 2, defendant No. 1 was

born. It is further claimed by the plaintiff that when defendant No. 1 was minor, the first wife-Saroj i.e. the mother of defendant No. 1 expired. Defendant Nos. 1 and 2 somehow agreed to the second marriage but they had a grudge in their mind. It is further pleaded by the plaintiff that he was in possession of a plot in dispute measuring 10 Marlas, on which later on house was constructed. However, the plaintiff was not the owner of the house but he was having a special power of attorney executed in his favour by one Subhash Chander. It is his further case that even Subhash Chander was not the owner of the property, he was also general power of attorney holder of one Vijay Sethi, who was the original owner. It is further claimed that after the second marriage of the plaintiff when the son; defendant No. 1 got major the defendants started having grudge against the step mother and therefore, they started pressurizing for transfer of the property in question to the son. Therefore, house was got transferred in the name of the son i.e. defendant No. 1 through fraudulent sale deed dated 18.10.1985. In this transaction, the plaintiff acted as a power of attorney of Subhash Chander since the house has not been formally transferred in the name of the plaintiff. Taking advantage of this fact, defendant No. 2 took the plaintiff to the office of Sub-Registrar under the garb of getting this house transferred in the name of the plaintiff/appellant. However, it was got transferred in the name of defendant Nos. 1 and 2 jointly. It is further pleaded that he never came to know about the nature of the transaction. It is further claimed by the plaintiff that thereafter defendant No. 1 sold his share to defendant No. 5 vide sale deed dated 9.11.2001. It is only thereafter that the suit has been filed by the plaintiff challenging the original sale deed in favour of defendant Nos.1 and defendant No.2 as well as the subsequent sale deed

dated 9.11.2001. It is further claimed that in the interregnum another suit was also filed by him for mandatory injunction in the year, 2002, which was ultimately withdrawn by him on the ground that during the pendency of the suit, he came to know that the impugned sale deed dated 18.10.1985 was got executed by defendant No. 2 fraudulently.

Parties led their evidence.

After considering the evidences of the parties, the Trial Court dismissed the suit.

Aggrieved against the judgment and decree passed by the Trial Court, the present appellant preferred an appeal before the lower Appellate Court. However, the lower Appellate Court also dismissed the appeal filed by the appellant by recording a finding that the sale deed was legal and has rightly been executed by the present plaintiff. It was further held that the entire proceedings only part of the plaintiff regarding the house in question seem to have arisen because of the discord between the step mother and the son. It was further held that the plaintiff/appellant herein has not led any evidence to prove his pleadings and the alleged fraud in the execution of the sale deed. Even the suit was held to be time barred.

While arguing the present appeal, learned counsel for the appellant has submitted that the sale deed is bad because it was got executed under misrepresentation and undue influence. He has further submitted that the sale deed is void also for the reason that no consideration has been passed in lieu thereof.

After hearing learned counsel for the appellant and perusing the records, this Court is of the view that there is no illegality or perversity in the findings recorded by the Courts below. Even as per the argument of

learned counsel for the appellant, the plaintiff/appellant herein had taken a plea of misrepresentation and undue influence in execution of the sale deed, thereby, he admits the execution of sale deed. However, he has not produced any evidence to prove either misrepresentation or undue influence in the transaction of sale deed. No witness whatsoever has been examined by him to prove these aspects. Hence the claim of the appellant is totally misconceived and has rightly been discarded by the Courts below.

The plea of the appellant regarding non-payment of consideration has also not been substantiated by him. The appellant has only tried to plead non-payment of consideration only on the ground that defendant No. 1 was minor at that point of time. Therefore, he was possibly not having any money to pay the consideration. However, the Courts below have rightly held that defendant No. 1 was not the only purchaser in the transaction. His maternal uncle was also there and payment of part of consideration relating to defendant No. 1 being made by defendant No. 2 cannot be ruled out. It was for the plaintiff to prove by leading positive evidence that no consideration was passed in this transaction. However, as stated above, no such evidence has been led. Therefore, this plea has also rightly been discarded by Courts below. The plea of limitation was also taken by learned counsel for the appellant which has also rightly been discarded by the Courts below. Even the argument taken by the plaintiff is the misrepresentation and undue influence in execution of the sale deed. The plea of misrepresentation and undue influence in execution of the sale deed presumes that the person was knowing the fact that he has executed the deed and he is claiming either a mistaken fact or undue pressure by someone else in transaction. In any case, this plea itself would show that he was

having a full knowledge of the transaction of the sale. Therefore, the suit was also time barred.

The Courts below have rightly held that the plaintiff was only a Special Power of Attorney holder and till today the original owner has not come forward to challenge the sale deed executed by the plaintiff as Power of Attorney of the original owner. So there is no valid challenge to the sale deed.

No other argument was raised by learned counsel for the appellant.

In view of the above, the judgment and decree passed as well as findings recorded by the lower Courts below are upheld.

Hence, the present appeal is dismissed being devoid of the merit.

7th September, 2017

Shivani Kaushik

[RAJBIR SEHRAWAT]

JUDGE

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*