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

**RSA No. 5606 of 2016 (O&M)
Decided on: 24.07.2017**

Sunhari

.....Appellant

versus

Rajo and another

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Kartar Singh Malik, Advocate
for the appellant.

Rajbir Sehrawat, J.(Oral)

CM-14694-C-2016

This is an application for condoning the delay of 90 days in re-filling the appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 90 days in re-filling the appeal is condoned.

RSA-5606-2016

The present appeal has been filed by vendee-Sunhari challenging the decree passed by the lower Appellate Court in favour of vendor-plaintiff-Rajo who is the respondent herein.

In this case, Rajo has filed a suit for declaration that the sale deed dated 17.01.2007, allegedly executed by her in favour of Sunhari is illegal and void, being a fraudulent document and without consideration. A suit filed by the respondent-plaintiff-Rajo was decreed. The appeal against

the judgment and decree passed by the trial Court was also dismissed. Hence, the present appeal has been filed by the vendee against the concurrent findings of the courts below.

Learned counsel for the appellant submits that findings recorded by the Courts below are perverse and are not sustainable. He submits that there was no fraud in the sale deed and the entire consideration mentioned in the sale deed was paid at the residence of the plaintiff-respondent herein. He further submits that the pedigree table shown at page 31 of the paper book shows that the plaintiff had only 1/6th share in the suit land whereas in the sale deed, she had sold 1/3rd share. He further submits that the suit filed by the plaintiff-respondent herein was only for declaration and therefore, the same was not maintainable. Learned counsel for the appellant further submits that the suit for possession should also have been filed. Reliance is placed upon the statement of PW4-Nathu who had stated that the appellant herein was owner in possession of the suit land.

It is an admitted fact that for the fraud committed qua execution of this very sale deed, the appellant has been convicted and sentenced under Section 420 read with Section 120-B of the Indian Penal Code and his appeal against that conviction also stands dismissed. Although learned counsel for the appellant submits that the findings of the Courts are not binding upon the civil Court, however, anything on the record of the present civil suit also does not lead to any contrary inference to exclude the fraud which has been held by the courts below to be committed upon the plaintiff.

Learned Courts below have rightly come to the conclusion that signatures of the plaintiffs were obtained by playing a fraud upon the plaintiff in the garb of getting her bank account opened for deposit of the

compensation money which had come from acquisition of some of the joint lands of the parties. So, as far as the payment of consideration is concerned, the Courts has rightly held that even for raising a loan of Rs. 25,000/- in the year 2006, he had to mortgage his share in the joint property to the Oriental bank of Commerce as shown in Ex.P1 and Ex.P3. Therefore, the fact that he would be having Rs. 15, 21,000/-, all in cash with him, to be paid to the plaintiff-Rajo as consideration of the suit land is highly improbable and does not inspire the confidence. Otherwise, also except the bald statement of the appellant herein, there is no documentary evidence to show that this amount was actually paid to the plaintiff. Since nothing has been paid before the Registrar at the time of the execution, therefore, the payment of consideration is not within the preponderance of probabilities and hence, as rightly held by the courts, the transaction was without consideration.

The plea of the learned counsel for the appellant that the suit only for the declaration was not maintainable since possession has been delivered to the appellant is also misplaced. Except the recital in the sale deed and the entries in the mutation there is nothing on record in the name of evidence to show that the possession of the land was actually handed over to the appellant. Statement of DW3-Dharambir and DW4-Nathu also does not conclusively show that the possession was actually handed over to appellant. They have nowhere stated that the transaction of handing over the possession in favour of the plaintiff has taken place in their presence. Not only that, even any suggestion was not given to the plaintiff-Rajo that actually the possession was transferred to the vendee-appellant by any valid and sustainable revenue transaction/order or in presence of any witnesses. Hence, this plea of the learned counsel for the appellant has also to be

discarded.

Learned counsel further submits that although the plaintiff had only 1/6th share of the land in question however, she had sold 1/3rd share which is more than her share. However, this plea is nowhere on the record and also not pleaded before the lower Courts. Learned counsel for the appellant is raising this plea for the first time in second appeal before this Court. Although he can not make such a plea in regular second appeal, however, this plea itself shows that the sale deed was not genuine because Sunhari, being in the same family, would not have made any payment for 1/3rd share if the plaintiff had only 1/6th share. Factually, also this plea is not correct since appellant has herself admitted that Rajo-plaintiff was paid 1/3rd share in the compensation which was received for the acquisition of the land out of the joint property.

No other arguments were raised by learned counsel for the appellant.

In view of the above findings, there is no infirmity in the findings recorded by the Courts' below. Hence, this appeal is dismissed.

24th July, 2017

shabha

[RAJBIR SEHRAWAT]

JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No