

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4319 of 2015 (O&M)
Date of decision: 31.08.2017

Haneefa and others

... Appellants

Vs.

Jota

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. S.K. Arora, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful plaintiffs are in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby their suit for declaration was dismissed by the learned trial Court vide its impugned judgment and decree dated 20.05.2014 and their first appeal also came to be dismissed by the learned Additional District Judge vide impugned judgment and decree dated 20.05.2015, upholding the judgment and decree of the learned trial Court.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of the impugned judgment, are that earlier Khushia, their father was owner in possession of the land in dispute. He died on 14.10.1998 leaving behind them as his only legal heirs. Their mother had pre-deceased him. After the death of Khushia, when they approached the Halqa Patwari for sanction of

mutation in their favour, they were apprised that the land in dispute had already been transferred in the name of the defendant on the basis of sale deed dated 12.09.2008. The sale deed was alleged to be illegal, null and void on the ground that the same had been procured by the defendant by way of fraud and misrepresentation. Their father Khushia was aged about 85 years at the time of his death and he used to remain sick and was not mentally sound and taking undue benefit of his old age, the defendant procured the alleged sale deed in connivance with the marginal witnesses and document writer. They had cordial relation with the defendant and had asked them to look after their father in their absence and during this period, they took benefit of their absence, the defendant with the connivance of the marginal witnesses and document writer procured the alleged sale deed. Khushia had no necessity to sell the land in dispute as he was not in need of money because he was having sufficient income from the land to maintain himself and to bear the expenses of his treatment and had no other liability. He was not in sound disposing mind and was suffering from various diseases and was even not able to move and as such he could not execute the sale deed. The defendant had taken property on lease from their father and by taking undue benefit of his old age, the defendant got the sale deed executed illegally and fraudulently. The sale deed was without consideration. They approached and requested the defendant to admit their claim, but he refuted their claim which necessitated them to file the suit.

Defendant was put to notice. He appeared and filed his contesting written statement, raising more than one preliminary objections. Replication was filed by the plaintiffs. On completion of pleadings of the parties, the learned trial Court framed the following issues: -

1. Whether the plaintiffs are entitled to declaration as prayed for? OPP.
2. Whether plaintiffs are entitled to permanent injunction as prayed for? OPD.
3. Whether the suit of the plaintiffs is false, frivolous and vexatious? OPD.
4. Whether the plaintiffs have no locus standi to file the present suit? OPD.
5. Whether the plaintiffs have no cause of action to file the present suit? OPD
6. Relief.

In order to prove their respective pleaded cases, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiffs have failed to prove their pleaded case for want of sufficient and cogent evidence. Accordingly, suit filed by the plaintiffs for declaration was dismissed by the learned trial Court vide its impugned judgment and decree dated 20.05.2014. Plaintiffs felt aggrieved and filed their first appeal, which also came to be dismissed by the learned Additional District Judge vide impugned his judgment and decree dated 20.05.2015. Hence this regular second appeal at the hands of unsuccessful plaintiffs.

Heard learned counsel for the appellants.

It is a matter of record that the entire case of the plaintiffs-appellants was based on the plea of fraud. It is also true that the plaintiffs-

appellants could not bring the cogent and sufficient evidence on record, so as to prove their plea of fraud. This was the reason that the learned Courts below recorded their concurrent findings of facts on this material aspect of the matter, before passing their respective impugned judgments and decrees. Having said that, this Court feels no hesitation to conclude that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

It is very easy to raise the plea of fraud, but it is equally difficult to prove the same. The plea of fraud is to be proved like a criminal charge. In such a situation, a heavy onus would be on the plaintiffs to bring on record the cogent and convincing evidence. However, in the case in hand, there was not an iota of evidence, which may even remotely suggest that the defendant has committed fraud either with the plaintiffs-appellants or their father.

It has come on record that the plaintiffs-appellants were present at the time of execution of the sale deed by their father in favour of the defendant. Once it is so, the appellants had no case either on facts or in law right from day one. That is what has been held by both the learned Courts below. Under these undisputed circumstances of the case, it can be safely concluded that the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at his judicious conclusion, learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned first appellate Court in

para 14 of the impugned judgment, which deserve to be noticed here, read as under: -

“The onus to prove this fact is only on the appellants/plaintiffs that the Alleged sale deed dated 12.9.2008 is forged and fabricated document and result of misrepresentation. But while plaintiff no.1 Haneefa stepped into witness box as PW3 she categorically admitted that she was also present at the time of execution of the sale deed and she has not raised any objection at that time. Even otherwise it is admitted that Khushia was owner in possession of the land in dispute. He was sound disposing mind at the time of execution of the sale deed. Moreover to prove the due execution of the alleged sale deed dated 12.9.2008, defendant examined PW1 Aman Masih, registration clerk who proved on record the due registration of the sale deed dated 12.9.2008 in their office. The defendant has also examined the scribe of the sale deed Sanjiv Kumar Arora as PW2 and the marginal witness Darshan Singh as PW3. In this way the presumption of truth is attached with the duly registered document which is rebuttable but that presumption has not been rebutted by the plaintiff by brought on record the positive and cogent evidence.”

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He also failed to raise any question of law, much less substantial question of law, 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 regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 since no illegality has been found in either of the impugned judgments and decrees passed by the learned Courts below, the same deserve to be upheld. Present regular second appeal having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[**RAMESHWAR SINGH MALIK**]
JUDGE

31.08.2017
vishnu

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