Sr. No. 102

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

RSA No. 2295 of 2014(O&M)
Decided on:28.07.2017

Phoolwati and others

..........Appellant(s)

versus

Dalmir Singh @ Dalbir Singh and others

..........Respondent(s)

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Govind Chauhan, Advocate
for the appellants.

Mr. Akshay Jindal, Advocate
for the Caveators/respondents.

Rajbir Sehrawat, J.(Oral)

CM No. 3481-C of 2017

This is an application for bringing on record the legal representatives of the deceased appellant No. 1.

Notice in the application to the non-applicants.

Shri Akshay Jinal, Advocate who is present in Court accepts notice on behalf of respondents/caveators and submits that he has no objection in bringing on record the legal representatives of appellant No. 1.

Therefore, in view of the above, civil misc. application is allowed and the legal representatives of appellant No. 1 are ordered to be brought on record.

Amended Memo of Parites attached with this application is taken on record.

RSA No. 2295 of 2014(O&M

There is an appeal filed by the plaintiff whose suit for declaration of the sale deed dated 28.01.2000 as null and void being based on fraud was dismissed and the judgment and decree of the trial court were upheld by the lower appellate court. Therefore, the appellants are challenging the concurrent findings of the courts below.

In this case, learned counsel for the appellants has submitted that the land in question was 53 Kanals 12 Marlas which was under mortgage vide mortgage deed dated 28.02.1997 which is Ex:P-5. As per the counsel, the mortgage money was ₹4 lakhs in the year 1997 and he submits that this mortgage was never redemeed till the date of the alleged sale deed. It is the contention of learned counsel for the appellant that the sale deed is based on fraud because there is not even recital in the sale deed to the effect that the land in question was under mortgage.

To continue his argument learned counsel for the appellants has submitted that the market price of the land in question was ₹1,60,000/- per acre on the date of sale deed whereas total consideration shown in the sale deed is ₹2.5 lakhs, only which turns out to be ₹35,000/- per acre. Therefore, it is the contention of learned counsel that this circumstance shows the suspicious nature of the sale deed leading to the conclusion of the fraud in the transaction.

Next argument of learned counsel for the appellants is that the although the sale deed is dated 28.01.2000, Ex:P-4, but after two months mortgage is shown to have been redeemed on 10.03.2000 showing the presence of Rambir Lambardar and showing ₹4 lakhs as having been paid by the appellant to the respondent vendee who happen to be the mortgage also, as repayment of mortgage money. Further contention of learned counsel is that after the alleged redemption the mutation No. 2162,Ex:P-7 was entered and on the same day another mutation No. 2163 Ex:P-8 was also entered and at the time of entry of those mutations one Mewa Singh was shown to be present on their behalf as special power of attorney. Counsel submits that they have never authorised Mewa Singh to be present on their behalf through any instrument of Special Power of Attorney, so mutation on the basis of sale deed was without notice to them.

In view of the above, the next submission of learned counsel for the appellant is that since the sale deed itself does not mention the existence of a mortgage and the consideration mentioned in the sale deed is too low as compared to the market price or even less than the mortgage money, therefore, this reflects the fraud in execution of the sale deed. It is further contended by learned counsel for the appellant that one of the attesting witnesses who appeared as PW in the case has not presented himself for being cross-examined although the second witness duly presented himself for cross-examination.

Mr. Akshay Jindal, Advocate appearing for the respondents/caveators submits that the mortgage and the proceedings thereon do not carry any significance in this case because the mortgage was also in favour of respondents No. 1 and 2 only, who are also the vendee in the sale deed along with their brothers. He submits that this transaction of redemption of mortgage was none mentioned in the sale deed because it was a matter of trust between the parties and therefore, none mentioning of the mortgage in the sale deed does not affect the validity of either the sale transaction or the sale deed.

Having considered the rival contention of the parties, it is clear that although the factum of mortgage is not mentioned in the sale deed, however, since the mortgage was also between the same parties therefore, mere not mentioning of the mortgage in the sale deed by way of recital does not vitiate the transaction of the sale or the instsrument of the sale i.e. Sale deed. Further it is well settled law that mere insufficiency of consideration is no ground for challenging and setting aside the same. The parties entered into an agreement with full knowledge, understanding and with their open eyes and they can accept any amount as a consideration. Court can not delve into the circumstances which led to the payment of lesser money as the consideration amount as compared to the market value. So far as the story regarding redemption is concerned it deserves to be mentioned here that the fact in issue in this suit is not the transaction of mortgge or anything relating thereto. The fact in issue is that the validity of the sale deed which has been duly proved by the purchasers by examining the attesting witnesses. Not only that, while appearing in the witness box for the cross examination, one of the sellers i.e. Shimla has categorically admitted that she appeared before the Sub-Registrar, that she was explained the documents which was being registered and they had put their signatures on the same after understanding everything. This itself is sufficient to show and establish the validity of the sale deed in question.

The contention of learned counsel qua existence of the suspicious circumstance surrounding the sale deed in not tenable in law. In case of a sale deed the concept of existence of suspicious circumstance is no ground to set aside the validity of same. This concept is applicable exclusively to the instrument of 'Will' which takes effect after the date of death of the executant of that instrument. In case of sale deed if the parties entered into the agreement and put their signature knowing everything fullywell when they are putting their signatures on the agreement of sale. Therefore, the plea of suspicious circumstances can be no ground to set aside the sale deed. The only plea available to the seller in case of sale deed is the plea of fraud, undue influence or misrepresentation. In the present case, the appellant has not lead any evidence to show the existence of either the fraud or the misrepresentation or the undue influence except their self serving statements. Therefore, the plea of fraud has rightly been declined by both the courts below.

Next submission of learned counsel for the appellant is that the findings recorded by the courts below regarding the limitation is wrong because in case of suit seeking possession the limitaion would be 12 years from the date of dispossession or from the date of possession of other parties become adverse and therefore, the courts were wrong in taking the limitation to 3 years. However, this submission of learned counsel for the appellant also do not merit acceptance because the challenge in the case is to the instrument of sale deed. It is well within the knowledge of the appellant that they executed the sale deed and if they want to challenge the validity of the sale deed then limitation of 3 years would be applicable.

Therefore, no_ fault can be found in the findings recorded by the courts below.

No other argument was raised.

In view of the above, the instant appeal fails and the same is dismissed.

28th July, 2017 **[RAJBIR SEHRAWAT]**
Shivani Kaushik **JUDGE**