

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

RSA No. 6766 of 2016

Date of decision : 04.12.2017

Rukmani Devi

...Appellant

versus

Bhudev Bhardwaj and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.S. Mamli, Advocate
for the appellant

Mr. Vishavjit Singh, Advocate
for respondent Nos. 1 and 2

RITU BAHRI, J.

This regular second appeal is directed against the judgment and decree dated 06.10.2016 passed by the learned Addl. District Judge, Palwal whereby the judgment of the trial Court dated 15.07.2014 passed by learned Civil Judge (Jr. Divn.) Palwal was set aside and the suit of the plaintiff was decreed.

Brief facts of the case are that the plaintiffs were claiming themselves to be owners in possession of their share and share of Shakuntala Devi, defendant No. 2 in agricultural land comprising in khewat/Khatoni No. 389/447, Rect. No. 297, Killa No. 13/2 (014), 17/3 (416), 18/1 (310), 24/2 (11) and Khewat/Khatoni No. 74/1130, Rect No. 297, Killa No. 23/2 (214), 24/1 (57) total measuring 18 kanals 02 marlas, situated within revenue estate of Palwal, District Palwal. As per plaintiffs, they have become owner in possession of share of defendant No. 2 vide decree passed by the then learned Civil Judge (Jr. Divn.) in the suit No.

1039, decided on 21.03.1998 and mutation No. 360B was also sanctioned in favour of the plaintiffs, however, the same could not be reflected in the revenue record. Defendant No. 1 by playing fraud upon defendant No. 2 obtained a sale deed in her favour on 14.01.2009 on the pretext that defendant No. 2 is being honoured on the eve of Makkar Sakranti and obtained a false and fictitious sale deed dated 14.01.2009.

The suit filed by the plaintiffs was dismissed by the learned trial Court on the ground that plaintiffs failed to prove the alleged fraud played by defendant No. 1. The fraud in civil case is required to be proved like in criminal cases. Before the filing of the present suit neither plaintiffs nor defendant No. 2 had lodged any complaint against defendant No. 1. Further defendant No. 2 has not challenged the sale Ex P10 by filing a separate civil suit while she was alive. It is the plaintiffs who had challenged the sale deed Ex P10 in the present suit and Smt. Shakuntala Devi, who is denying the validity of the sale deed Ex P10 is made one of the defendant instead of the plaintiff. D.W.1 Lakhmi Chand who was one of the marginal witness had specifically deposed that contents of the sale deed Ex P10 was read over to the parties before the execution and parties in person appeared before the Sub Registrar, Palwal.

However, the Appellate Court has reversed the finding of the trial Court and decreed the suit of the plaintiffs on the ground that the parties are not strangers but very closely related. Defendant No. 1 in cross examination admitted that plaintiffs are her Jeth (husband's elder brother). She further admitted that her husband has also sold 1/8th share. She admitted that these two brothers Girdev and Bhudev are in cultivating

possession. Defendant No. 2 was not stranger and defendant No. 1 admitted in cross examination that Shakuntala was her 'Bua Sas'. Defendant No. 1 has not led any evidence as to the source from which she would have paid Rs.10,94,000 and in cross examination she deposed that her son has made the payment but he was not witness in the present suit to depose of the fact of payment of consideration. It has been observed by the Appellate Court that the decree was not made subject to the registration in a way that in case it is not registered it would be a nullity. No time was mentioned in the judgment to get the decree registered. Consent decree is as good as contested one and can be questioned only on the ground on which contract is voidable or void. Defendant No. 1 cannot take shelter of non-registration of the consent decree and claim that plaintiffs had no right, title and interest by virtue of consent decree.

Accordingly, the judgment of the lower Appellate Court setting aside the judgment of the trial Court does not require any interference by this Court, as the plaintiffs were found to be in cultivating possession and consent decree could not have been discarded only on the ground of non-registration.

No substantial question of law arises for adjudication by this Court.

The appeal is dismissed.

04.12.2017

G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No