

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

RSA No. 1715 of 2017 (O&M)

DATE OF DECISION : 25.10.2017

Vedo Devi and others

.... APPELLANTS

Versus

Sandeep and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Ramesh Goyat, Advocate,
for the appellants.

* * *

AVNEESH JHINGAN, J.

The present regular second appeal has been filed by the defendants against the judgments and decrees passed by the courts below decreeing suit of the plaintiffs for possession and permanent injunction.

The parties are being referred to as per their original position in the civil suit.

The plaintiffs filed a suit for possession and permanent injunction pleading that the agricultural land detailed in para No.1 of the plaint was purchased by them from Satbir (predecessor of the defendants) vide registered sale deed No. 9271 dated 08.11.2005 for a sale consideration of ₹ 10,13,000/-. It was pleaded that possession of the suit property was delivered to the plaintiffs and mutation No. 4153 dated 07.05.2006 was also

sanctioned in their favour. On the eastern side of the suit property, there exists three karam wide rasta and three karam wide water course. It was alleged that in January, 2007, defendants forcibly encroached upon some portion of the suit property in rectangle and killa No. 7/14 min and 7/17/1. The plaintiffs got the suit property demarcated and Tehsildar, Sonipat found that the defendants were in unauthorised possession of 1 kanal 8 marlas of land. The plaintiffs filed suit for declaration and permanent injunction.

On notice, written statement was filed by the defendants. It was admitted that their predecessor had sold 6 kanals 16 marlas of land comprised in rectangle and killa No. 7/14 situated in the revenue estate of village Kumaspur. The claim of the plaintiffs with regard to 6 kanals 16 marlas of land was admitted. The defendants pleaded that 1 kanal 6 marlas of land was never agreed to be sold and by playing fraud, the plaintiffs got purchased this land, and hence, the sale deed is liable to be set aside.

The learned trial court framed issues.

After considering the statements of the witnesses and the evidence brought on record by the parties, learned trial court decreed the suit with costs. The defendants were directed to hand over the actual physical vacant possession of the portion of the suit property, encroached upon by them. Further, the defendants were restrained from encroaching upon the rasta and the water course.

Aggrieved of the said judgment and decree, appeal was filed by the defendants. The learned Additional District Judge, Sonapat, dismissed

the said appeal vide judgment and decree dated 14.10.2016. Hence, the present Regular Second Appeal.

The important fact to note is that it is an admitted case of both the parties that the land was sold by predecessor of the defendants to the plaintiffs vide registered sale deed No. 9271 dated 08.11.2005 for a sale consideration of ₹ 10,13,000/-. The only dispute is that as per the plaintiffs, the land sold was 8 kanals 2 marlas, whereas according to the defendants, only 6 kanals 16 marlas of land was sold. It is also not dispute that at the time of institution of the suit, the said 1 kanal 6 marlas of land was in possession of the defendants. The only resistance to the suit was that the plaintiffs by fraud got the sale deed of 8 kanals 2 marlas of land registered in their favour.

It would be appropriate to note at this stage that the plaintiffs in order to prove their suit examined Ram Chander, retired Naib Tehsildar as PW.1, who submitted his report dated 30.11.2007 Ex.P1 stating that the defendants have encroached upon 1 kanal 8 marlas of land comprised in killa Nos. 7/14 and 7/17. Plaintiff No.1 Sandeep himself stepped into the witness box as PW.2. Om Parkash Lambardar, who was the attesting witness to the sale deed, appeared as PW.3. Ved Parkash, the deed writer, was examined as PW.4. He produced copy of his register and proved entry made therein as Ex.PW4/A. Copy of aks-sizra was produced as Ex.P3. On the other hand, defendant No.3 Sandeep appeared as DW.1. DW.2 Ram Mehar tendered his duly sworn affidavit Ex.DW2/A in his examination-in-chief,

but was not subjected to cross-examination.

After appreciating the evidence, the learned courts below were satisfied that the plaintiffs had purchased 8 kanals 2 marlas of land. It was held that the defendants have failed to discharge their onus to prove the plea of fraud.

In the regular second appeal, following two questions of law were framed :-

- (i) Whether the mandatory provisions of law contained in Order 41 R 31 CPC stood glaringly violated in the instant case in so far as the learned lower Appellate court has not given its own issue-wise findings separately although it was duty bound in law to do so being final court of fact ?
- (ii) Whether the present one is a case of clear misreading and mis-interpreting the documentary as well as oral evidence available on the record ?

At the time of arguments, learned counsel for the defendants submitted that he is not pressing question No.(i) and is restricting only to question No. (ii).

The main argument of learned counsel for the defendants is that the courts below have not appreciated the statement of PW.3 Om Parkash Lambardar, as he in his cross-examination stated that the agreement was regarding 6 kanals 14 marlas land and he put his signatures over the sale

deed believing that the same was with regard to land measuring 6 kanals 14 marlas. He further relied upon the statement of defendant No.3 Sandeep, who appeared as DW.1 and stated that he was present at the time of payment of sale consideration and execution of the sale deed. He further stated that only land measuring 6 kanals 16 marlas was sold, and he came to know about the mentioning of 1 kanal 6 marlas land in excess in the sale deed, only after 2-3 months of execution and registration of sale deed. Learned counsel for the defendants, therefore, concluded his arguments by submitting that fraud was played upon Satbir, being an illiterate and rustic person, and instead of 6 kanals 16 marlas of land, sale deed regarding land measuring 8 kanals 2 marls was got registered by the plaintiffs in their favour.

The issue raised in the present appeal has two aspects. Firstly, that a challenge is being posed to a registered sale deed on the ground of fraud; and secondly, reliance is being placed upon the statement of an attesting witness to challenge the contents of the sale deed.

Now, dealing with the first aspect that by playing fraud, the plaintiffs took ownership of excess land to the extent of 1 kanals 6 marlas, it would be appropriate to mention at this juncture that no evidence has been adduced by the defendants proving the alleged fraud. A duly registered sale deed is being challenged, but not even an iota of evidence has been produced to substantiate the allegation of fraud. The law is well settled that the person, who alleges fraud has to prove it. With regard to the second

aspect, apart from the bald statement of defendant No.3, the only reliance is upon the cross-examination of PW.3 Om Parkash Lambardar, who stated that he was attesting witness to the registered sale deed and put his signatures assuming that the sale deed was for 6 kanals 14 marlas of land. Both these issues have been dealt with by the Hon'ble Apex Court and this court in a catena of judgments.

With regard to fraud, the Hon'ble Apex Court in **Union of India Versus M/s Chaturbhai M. Patel and Co.,** 1976 (1) SCC 747, the Hon'ble Apex Court held as under :-

*“7. The High Court has carefully considered the various circumstances relied upon by the appellant and has held that they are not at all conclusive to prove the case of fraud. It is well settled that fraud like any other charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt; per Lord Atkin in **A.L.N. Narayanan Chettyar v. Official Assignee, High Court Rangoon, AIR 1941 PC 93.** However suspicious may be the circumstances, however strange the coincidences, and however grave the doubts, suspicion alone can never take the place of proof. In our normal life we are sometimes faced with unexplainable phenomenon and strange coincidences, for, as it is said, truth is stranger than fiction. In these circumstances, therefore, going through the judgment of the High*

Court we are satisfied that the appellant has not been able to make out a case of fraud as found by the High court. As such the High Court was fully justified in negating the plea of fraud and in decreeing the suit of the plaintiff.”

Smt. Shrisht Dhawan Versus M/s Shaw Brothers, 1992 (1) RCR SCC 534, relying upon its earlier decision reported in **Pankaj Bhargava Versus Mohinder Nath**, 1991 (1) RCR 96 (SC), held as under :-

“In Pankaj Bhargava v. Mohinder Nath, 1991 (1) R.C.R. 96 (SC), it was observed (para 13) :

“It is true that in Noronah's case a challenge to the validity of the limited tenancy was permitted even after the period of limited lease. But later cases have substantially denuded this position. In Vohra's case, this Court laid down that a tenant who assails the permission was procured by fraud a ground not dissimilar to the one urged in the present case must approach the Rent Controller during the currency of the limited tenancy for an adjudication of his pleas as soon as he discovers facts and circumstances which, according to him, vitiate the permission.”

Thus a tenant cannot wait for the entire period of lease and then raise objection to execution on fraud or collusion unless he is able to establish that it was not known to him and he came to know of it, for the first time only at the time of

execution. In other words the Controller shall not be justified in entertaining an objection in execution unless the tenant establishes, affirmatively, that he was not aware of fraud before expiry of the period of lease. To the following extent, therefore, the law on procedural aspect should be taken as settled.

(1) Any objection to the validity of sanction should be raised prior to expiry of the lease.

(2) The objection should be made immediately on become aware of fraud, collusion etc.

(3) A tenant may be permitted to raise objection after expiry of lease in exceptional circumstances only.

(4) Burden to prove fraud or collusion is on the person alleging it.”

In **Sridevi Versus Jayaraja Shetty**, 2005 (2) SCC 784, the Hon'ble Apex Court observed as under :-

“It is well settled proposition of law that mode of proving the will does not differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by Section 63 of the Indian Succession Act, 1925. The onus to prove the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary

capacity and proof of the signature of the testator, as required by law, need be sufficient to discharge the onus. Where there are suspicious circumstances, the onus would again be on the propounder to explain them to the satisfaction of the court before the will can be accepted as genuine. Proof in either case cannot be mathematically precise and certain and should be one of satisfaction of a prudent mind in such matters. In case the person contesting the will alleges undue influence, fraud or coercion, the onus will be on him to prove the same. As to what are suspicious circumstances have to be judged in the facts and circumstances of each particular case.”

The Full Bench of this Court in **Smt. Niranjana Kaur and others Versus The Financial Commissioner, Revenue & Secretary to Government, Punjab and others**, 2010 (4) RCR (Civil) 610, observed as under :-

“47. However, the fraud and mis-representation is to be on the part of the vendee, or with his consent, by his vendor. In absence thereof, it would be unfair to deny the right to contest to the subsequent vendee. It will be for the party alleging fraud to prove the fraud and misrepresentation, as no presumption can be drawn.”

In the above decisions, the law has been enunciated that one who alleges fraud has to prove it. From a perusal of the facts of the present case, it is

evident that the defendants have miserably failed to prove their plea of fraud. In such circumstances, no defect can be pointed out in the judgments and decrees passed by the courts below holding that the defendants have not been able to discharge their onus to prove fraud.

The other aspect of this very contention is reliance upon the statement of defendant No.3 Sandeep as DW.1. In his statement, he stated that he was present at the time of passing of sale consideration and registration of the sale deed. According to him, only 6 kanals 16 marlas of land was sold. Even this contention in itself cannot be relied upon to prove fraud. DW.1 Sandeep in his statement deposed that after 2-3 months of execution of the sale deed, he came to know that an additional 1 kanal 16 marlas of land was also added in the sale deed. However, in the written statement filed in the court, it was stated that the defendants came to know about this fact only on filing of the suit by the plaintiffs. On the other hand, the plaintiffs have been able to prove their case relying upon the registered sale deed, mutations, statement of PW.4 Ved Parkash, deed writer, who in his statement deposed that the said document was signed by the parties and the witnesses after its contents were read over by him to them. Further, in order to allege fraud, reliance is being placed upon an agreement to sell. No agreement to sell has been produced on record and even defendant No.3 in his statement has specifically stated that no agreement to sell was reduced into writing.

The next contention raised by learned counsel for the

defendants is that the statement of PW.3 Om Parkash Lambardar has not been appreciated properly by the courts below. The sale deed in this case was executed and registered for sale of 8 kanals 2 marlas of land. However, the Lambardar, who was attesting witness to the registered sale deed, had stated that the agreement was for 6 kanals 14 marlas of land and he put his signatures on the sale deed believing the same to be regarding sale of land measuring 6 kanals 14 marlas. This statement in itself will not prove the fraud. In the present case, execution and registration of the sale deed is not disputed. The only dispute is that in the sale deed, 8 kanals 2 marlas of land was mentioned to be sold, whereas PW.3 Om Parkash Lambardar, an attesting witness to the sale deed, signed the same believing it to be a sale deed for land measuring 6 kanals 14 marlas. The law is well settled that an attesting witness only identifies the executant of the document and cannot be presumed to have verified the contents thereof. In **Ramesh Chander Versus Budha Singh**, 2003 (4) RCR (Civil) 29, this Court observed as under :-

“4. There are concurrent findings of facts that Budha Singh is a marginal witness on the sale deed Ex.P.2 dated 19.7.1990. However, merely on the basis of being marginal witness, defendant-respondent cannot be held bound by the covenants or recitals made in the sale deeds. Such sale deeds can be evidence of due execution and defendant-respondent Budha Singh who have signed the same as an attesting witness could

*prove that fact but he cannot be held bound by its contents. In the case of **Chandrakantaben v. Vadilal Bapalal Modi, 1989 (2) RRR 408 (SC) : AIR 1989 Supreme Court 1269**, their Lordships of the Supreme Court have held that an attesting witness of a document is not presumed to be aware of its contents. The observations of their Lordships in this regard reads as under :*

“Reliance has been placed on the attestation of Bapalal, the father of the executants. Two days earlier i.e. on 22.10.1954 he had executed a release deed, Ext. 222 giving up his right in the family properties for a sum of money named therein. He was already staying in Vrindavan for sometime past and proposed to spend rest of his life there. The release deed however, did not contain any list of properties and the document, therefore, is not of any help to either side. So far the agreement Ext. 167 is concerned, it has not been stated by anybody that Bapalal went through its contents or that somebody read the same to him before he attested it. There is no presumption that an attesting witness of a document must be assumed to be aware of its contents. What is significant, however, is that it was executed in 1954 when the defendant No.6 was in adverse possession

to the exclusion of defendant No.1 and the other members of the family, and Jayantilal did not join the document and his brothers chose to get the signature of his minor son.” (emphasis added)

Similar principles were laid down by the Privy Council in Pandurang's case (supra) to hold that the attestation by a witness does not work as an estoppel against him. He can always deny its contents but may not be able to deny its execution. The views of the Privy Council reads as under :

*“And then further issue is raised as to whether he attested with knowledge and consented to the transfer. Before their Lordships consider the circumstances in which that attestation took place, they think it is desirable to emphasise once more that attestation of a deed by itself estops a man denying nothing what ever excepting that he has witnessed the execution of the deed. It conveys, neither directly nor by implication any knowledge of the contents of the document, and it ought not to be put forward alone for the purpose of establishing that a man consented to the transaction which the document effects. It is, of course, possible as was pointed out by their Lordships in the case of **Banga Chandra Dhur Biswas***

v. Jagat Kishore Acharya Chowdhuri, AIR 1916 PC 110 that an attestation may take place in circumstances which would show that the witness did in fact know of the contents of the document but no such knowledge ought to be inferred from the mere fact of the attestation.” (emphasis added).”

In *Vijay Mahajan, President Nagar Council, Dina Nagar Versus State of Punjab*, 2002 (2) RCR (Civil) 144, a Division Bench of this Court observed as under :-

“There is no presumption in law that an attesting witness of a document must be assumed to be aware of its contents. An attesting witness only identifies the party executing the document and need not be privy to the contents thereof.”

From a perusal of the above decisions, position is clear that an attesting witness to a document is not supposed to be aware of the contents of the document. In the present case, statement of PW.3 Om Parkash Lambardar, an attesting witness to the registered sale deed, is being read to dispute the contents of the sale deed.

The present case has to be considered from another touchstone that the burden to prove a fact always lies upon a person who asserts. Reliance in this regard is placed upon a decision of the Hon'ble Apex Court in *Rangammal Versus Kuppuswami and another*, 2011 (12) SCC 220, wherein it has been held as under :-

“14. Section 101 of the Indian Evidence Act, 1872 defines ‘burden of proof’ which clearly lays down that whosoever desires any court to give judgment as to any legal right or law dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. Thus, the Evidence Act has clearly laid down that the burden of proving fact always lies upon the person who asserts. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom burden lies has been able to discharge his burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party.”

In the present case, the entire endeavour of the defendants was only to rely upon the evidence produced by the plaintiffs. There was no effort made to prove their allegation of fraud.

During the course of hearing, learned counsel for the appellants could not point out any illegality or perversity in the impugned judgment passed by the learned first appellate court. He could not refer to any question of law much less substantial question of law which is sine qua non for this court to exercise its appellate power under Section 100 of the CPC.

The cogent findings recorded by the learned first appellate

court have been found factually correct and legally justified. Thus, no fault can be found in the impugned judgment and decree passed by the first appellate court and the same deserves to be upheld.

No other argument was raised.

Considering the facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any substance, thus it must fail.

Resultantly, the instant Regular Second Appeal is dismissed, however, with no order as to costs.

October 25, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes