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

**RSA No. 3985 of 2017 (O&M)
Decided on: 25.08.2017**

Sanjeev Kumar and others**Appellants**

versus

Vijay Kumar and others**Respondents**

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Amit Jhanji, Advocate,
for the appellants.

Mr. R.S.Bajaj, Advocate
for respondent No. 1-Caveator.

Rajbir Sehrawat, J.(Oral)

This is an appeal filed by the plaintiff against the concurrent judgments and decree against him passed by both the Courts below.

The present appellants-plaintiffs had filed a suit for declaration claiming that they are co-owners of the suit property which happened to be a house and that they are in joint possession of the portion of the house mentioned in the plaint. It was further claimed that a sale deed dated 11.08.1999 executed by Smt. Shanti Devi, the mother of the respondent-defendant No.1, in his favour in respect of the house in question, was a forged document and without consideration. Therefore, it was not binding upon them. It was pleaded by the plaintiffs that Smt. Shanti Devi was the owner of the suit property i.e. House No. 77-78 situated in the area of Jalandhar

Cantt., on the basis of a sale deed dated 18.01.1973. She had no love and affection for his son i.e. the defendant. However, the son, i.e., the defendant by practicing deceitful means succeeded in getting Will dated 28.01.1999 in his favour from Smt. Shanti Devi. However, coming to know of this fraud, Smt. Shanti Devi got the said Will cancelled vide the cancellation deed dated 10.02.1999. She breathed her last on 25.03.2010. It was pleaded that she was not on talking terms with her son i.e. defendant. Besides this, it was also claimed by the plaintiffs-appellants herein that she had executed the Will dated 03.03.2001 in favour of the plaintiffs and that on the basis of that Will, the plaintiff had become the exclusive owners of the above said house and they were in the exclusive possession of the same. However, defendant No. 1 succeeded in taking the possession by force. On 13.01.2006, by taking possession forcibly, the defendant claimed a sale deed dated 11.08.1999 allegedly executed by Smt. Shanti Devi in his favour. It was claimed by the plaintiffs-appellants herein that no such sale deed was executed by Smt. Shanti Devi. Rather, defendant No. 1 had taken her to the deed writer on the pretext of getting her medically treated and without disclosing the contents of the sale deed he obtained the signatures of Smt. Shanti Devi by practising deceitful means and therefore, the sale deed is void document being based on fraud.

Defendant No.1 filed written statement. He disputed the Will dated 03.03.2001 claimed to be in favour of the plaintiffs and claimed that the same was a fraudulent document designed to grab the property of the defendant who had purchased the same by the

sale deed dated 11.08.1999. It was further pleaded that plaintiff-Sanjeev Kumar being nephew of the defendant was given one room, Kitchen, toilet and bathroom on the ground floor in the suit property as a licensee of his house at a monthly license fee of Rs. 2000/- w.e.f. 01.01.2004. However, the plaintiffs tried to encroach upon the remaining portion of the house as well and therefore, the defendant had to terminate the license of the plaintiff-Sanjeev Kumar. Therefore, he was now in illegal possession.

While framing issues, Court had framed issues regarding other routine facts in issue; but had also framed a specific issue whether a sale deed dated 11.08.1999 is a forged and fabricated document being without consideration. The onus of proof of this issue was put on the plaintiffs. The plaintiff himself appeared in the witness box as PW-1 and placed on record the site plan as Ex-P1. On the other hand, the defendant appeared as DW-5 and also examined as DW-1, the Inspector of Food and Supplies Department, to prove the Ration Card. Besides this, the witnesses to the sale deed were examined by him as DW-2 Deepak Sharma; DW-3, Jai Parkash, DW-4 Romi, Registration Clerk of the office of Registrar and DW-6 Gurmej Singh. Therefore, the defendant proved the sale deed in his favour by examining the witnesses.

The learned Trial Court dismissed the suit filed by the plaintiffs. It is worthwhile to note here that before the Trial Court itself; the plaintiffs had given up their claim based on the Will dated 03.03.2001, claimed to be in their favour. Neither they produced the original Will nor have examined any attesting witnesses. Therefore,

they contended before the Trial Court that they are not claiming anything on the basis of Will and they would be claiming only as a natural successor to Smt. Shanti Devi by putting forward a challenge to the sale deed executed by Smt. Shanti Devi in favour of her son, the defendant No. 1. The learned Trial Court held that since the plaintiffs themselves have given up their claim based on the Will set up by them and also the defendant has been able to prove the due execution of the sale deed in his favour, therefore, the plaintiffs were not entitled to the decree as claimed by them.

Aggrieved of this, the present appellants/plaintiffs filed an appeal before the learned lower Appellate Court. Learned lower Appellate Court also dismissed the appeal filed by the present appellants. Before the learned lower Appellate Court, it was argued by the present appellants that once Smt. Shanti Devi cancelled the Will dated 28.01.1999 claimed by the defendants; vide the cancellation deed dated 10.02.1999 then there was no reason or occasion for her to execute the sale deed in favour of the same person on 11.08.1999, i.e., just after six months. To make the sale deed suspicious, the appellants also claimed that the stamp paper on which the sale deed was executed was purchased on 20.05.1999. Whereas the sale deed was executed after more than 2 ½ months on 11.08.1999. Therefore, according to the learned counsel for the appellants, the sale deed was a fraudulent document. It was further pleaded by the learned counsel for the appellants that Smt. Shanti Devi was an illiterate and *parda nashi* woman, therefore, she could not have executed the sale deed and the burden would be upon the

vendee to prove that the sale deed was genuine. The learned lower Appellate Court negated the plea raised by the appellants. So far as the validity of the sale deed is concerned; it was held by the learned lower Appellate Court that even in the deed of cancellation of the Will in favour of the defendant; there was nothing mentioned that Smt. Shanti Devi was maltreated by the defendant No. 1 or that she was aggrieved of any wrong attitude and behaviour of her son, i.e., defendant No. 1. Therefore, as per the learned lower Appellate Court, there was nothing to stop Smt. Shanti Devi from executing a sale deed in favour of defendant No.1 with regard to the property in question to declare the title of the disputed property during her lifetime. More over, Smt. Shanti Devi never challenged the sale deed during her life time. It was further held that as per the Ration Card proved on record; she was residing with defendant No.1-Vijay Kumar up to her last time. It was further recorded as a finding by the learned lower Appellate Court that Smt. Shanti Devi had been participating in various transactions and appearing before the public authorities for executing and cancelling the deeds regarding disposal of the property, therefore, she cannot be treated to be a *parda nashi* lady. Otherwise also, it was held by the lower Appellate Court that the sale deeds have been duly proved by the defendant by examining the attesting witnesses. Aggrieved of these findings, the present appeal has been filed.

The perusal of the file shows that there is no illegality, irregularity or the perversity in the findings recorded by the learned Courts below. The plaintiffs themselves have discredited their-self by

putting a false plea of the Will in their favour. When confronted to prove the sale, the plaintiffs stepped back and gave up the plea of the Will being in their favour. Therefore, they have proved themselves to be the persons of not correct disposition. Otherwise also, since they have given up their claim based on the Will, therefore, they cannot be held entitled to anything qua the suit property on the basis of the Will.

So far as the challenge of the plaintiffs to the sale deed in favour of defendant No. 1 is concerned, the onus of proof of these documents to be fraudulent, in terms of Section 17 of the Indian Contract Act, was upon the plaintiffs themselves. However, they have not led any evidence whatsoever to prove any fraud in the transaction of the sale deed and to prove any ingredient of fraud as contained in Section 17 of the Indian Contract Act. So far as, the attending circumstances, which the plaintiffs claim to be suggesting the suspicious nature of the transactions of sale and execution of the sale deed is concerned; their argument deserves only to be rejected. Mere existence of the alleged suspicious circumstances, around the transaction of the sale and the registered sale deed is not sufficient ground to declare the sale deed as null and void. The concept of existence of suspicious circumstances as ground to challenge deed is not applicable qua the challenge to a contract of sale of property where the parties entered into a contract despite knowing all the attending circumstances, be these of suspicious nature or otherwise. The concept of existence of suspicious circumstances as a ground to set aside the transaction of disposal of the property is applicable only

in case of a Will where the deed of transfer takes effect after the death of the testator. So far as the allegation of fraud in a transaction of sale or agreement to sell is concerned, it can be proved only by proving the ingredients as contemplated in Section 17 of the Indian Contract Act. However, as stated above, the plaintiffs have not led any evidence whatsoever to prove any fraud in the transaction of sale by Smt. Shanti Devi in favour of defendant No. 1.

On the contrary, defendant No. 1 duly produced the attesting witnesses and the official from the office of the Sub Registrar to prove the due execution of the sale deed. Otherwise, also the sale deed is a registered document to which the presumption of correctness is attached. The plaintiffs had the liberty to rebut the presumption of correctness of the sale deed by leading the positive and the cogent evidence to the contrary. However, as stated above, no such evidence has been led by the plaintiffs.

It has come on record that the parties to the sale deed were only the mother and the son. The mother was residing with the son. Earlier, the mother had executed a Will in favour of her son i.e. the defendant. However, apprehending that there can be some dispute regarding the house in question and also to transfer the title absolutely in favour of her son during her life time only, she might have devised the process of executing the sale deed in favour of her son. There is absolutely nothing wrong or abnormal in this circumspect of the case. The executant of the sale deed; Smt. Shanti Devi was very much aware of all the facts regarding the property and its disposal and the methods of its disposal, may be by

receiving advices in this regard. She had been attending the office of Sub Registrar and also the Tehsil complexes from time to time to execute the deeds of disposal of the property. Therefore, she has rightly been held by the lower Appellate Court to be not a *parda nashi* lady. There is nothing wrong in the findings recorded by the learned lower Appellate Court.

No further point was argued by the learned counsel for the appellants.

In view of the above, judgments and decrees passed by the Courts below are upheld and the present appeal is dismissed being devoid of any merit.

25th August, 2017
shabha

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned	-	Yes
Whether reportable	-	Yes