

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.73 of 2017 (O&M)

Date of Decision: 11.07.2017

Deepchand

... Appellant

Versus

Smt. Anju Devi and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Harkesh Manuja, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J.(Oral)

1. This is an appeal against an appellate decree confirming the judgment of the trial court dismissing the suit of the plaintiff-appellant for declaration and mandatory injunction regarding a sale deed executed by him in favour of the defendants transferring the corpus suit property.

2. In the suit the plaintiff-vendor tried to resile from a registered sale deed dated May 20, 2011 that sale consideration of ₹33 lakh was not paid by the vendee and therefore the sale deed was void without consideration. This stand was taken in the presence of registered sale deed which unmistakably bore the thumb impression of plaintiff Deepchand.

3. The thumb mark was not disputed by the plaintiff as not belonging to him. There is a clear recital in the sale deed that sale consideration has passed before the registration of the sale deed in the Sub Registrar at Tehsil office. The sale deed was prepared by one Mahabir Parsad, Advocate and the plaintiff signed the sale deed, after having been read over the contents of the same in the presence of the witnesses, namely,

Subhash Lamberdar and Mukesh s/o Jeet Ram. The plaintiff admitted that

he had received the sale consideration from his collateral/vendee at his residence. The plaintiff alleged fraud in the making of the sale deed. Both the Courts have not agreed after reading the evidence. The finding is that fraud was not played on the plaintiff by the defendant-vendee. The judgments of the Courts at Bhiwani have concurrently found that the plaintiff must be held down to the recitals in the registered sale deed which he executed personally in the Tehsil office.

4. Mr. Manuja argues for the appellant that it was for the defendants to prove from where they got sale consideration to pay the vendor. He submits that plaintiff could not be called upon to prove the negative since he could not bring affirmative evidence and, therefore, the onus had shifted on the defendants to prove from where they got the money for a big deal involving payment of `33 lakh. This could have been an argument worth acceptance if the sale deed was itself clouded and in doubt and signatures disputed or the vendor impersonated etc. He cites the law in Janak Dulari Devi and another v. Kapildeo Rai and another, (2011) 6 SCC 555 and para.10 thereof in support of his contention which reads:-

“10. Where the sale deed recites that on receipt of the total consideration by the vendor, the property was conveyed and possession was delivered, the clear intention is that title would pass and possession would be delivered only on payment of the entire sale consideration. Therefore, where the sale deed recited that on receipt of entire consideration, the vendor was conveying the property, but the purchaser admits that he has not paid the entire consideration (or if the vendor proves that the entire sale consideration was not paid to him, title in the property would not pass to the purchaser.”

5. The stress is laid on the observation “if the vendor proves that

the entire sale consideration was not paid to him, title in the property would not pass to the purchaser”. It follows that vendor has to prove entire sale consideration was not passed on to him. The burden of proof suggests conclusively that the view taken by the Courts below that plaintiff was bound by the terms of the sale deed when there was a categorical recital therein that the sale consideration had passed on to him before the execution of the sale deed in its entirety in cash in the year 2011 was a fair reading of the documentary and oral evidence on record. If no evidence is set forth by the party who has the burden of proof to establish the existence of facts in support of an issue, then the issue must be found against that party. It is also a general rule that the onus probandi lies upon the party who seeks to support his case by a particular fact of which he is supposed to be cognizant. In general, wherever the law presumes the affirmative, it lies on the party who denies the fact, to prove the negative. After all, the plaintiff tried to resile from the sale deed then it was for him to create serious doubt on a preponderance of probabilities. There is a presumption of truth of the sale deed which is a document on public record stamped by the Sub Registrar under The Registration Act, 1908 and requires unimpeachable evidence to dislodge it.

6. The Courts below have appreciated the evidence and recorded findings of fact which are not open to be disturbed in second appeal and so long as they are not perverse, irrational or based on a wholesome misreading of evidence only then may interference be justified. No prudent vendor of ordinary intelligence would part with property by consciously executing sale deed without full consideration received. The plaintiff made

no serious attempt to discharge the burden to prove his case. Where burden is not discharged and onus had not legally shifted to the opposite party the plaintiff would not be entitled to a decree of declaration that the sale deed is void and illegal and deserves to be cancelled.

7. I find no substance in this appeal or any cause for interference in the findings of fact and would dismiss the same *in limini*.

(RAJIV NARAIN RAINA)
JUDGE

11.07.2017
manju

Whether speaking/reasoned *Yes*

Whether reportable *No*