

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Regular Second Appeal No. 1570 of 1989

Date of decision : May 30, 2018

Jaswant Singh

....Appellant

versus

Duni Chand and another

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Vikas Singh, Advocate, for the appellant

Mr. S.K.Singla, Advocate, for the respondents

Fateh Deep Singh, J. (Oral)

Plaintiffs now respondents Duni Chand and his brother Nanak Chand filed suit against present appellant Jaswant Singh who was then defendant for recovery of Rs 18,700/-. The grounds for filing the suit was that on 2.4.1984, defendant agreed to mortgage his land detailed in para no. 1 of the plaint measuring 9 bighas and 18 biswas for a consideration of Rs 18,700/- and received the entire amount and duly executed agreement to mortgage in favour of the plaintiffs wherein the date of registration of the mortgage deed was fixed as 2.4.1987. It is alleged that possession was delivered to the plaintiffs but in the meanwhile the defendant devised a way

and tried to dispossess the plaintiffs and which led to filing of another suit where stay orders were procured by the plaintiffs. It is further alleged that the defendant by having $\frac{1}{4}$ share has sold 8 bighas 15 biswas and only 1 bigha and 2 biswas was left after the execution of this agreement to mortgage and same was purely to defeat and defraud the rights of the plaintiffs and hence the suit.

The defendant in his stand denied simpliciter that he ever entered into an agreement to mortgage the land nor executed any such agreement and termed it to be a result of fraud and without consideration and thus claimed that no cause of action has ever arisen. The trial court framed the following issues:-

- “1. Whether the defendant agreed to mortgage his land measuring 9 bighas 18 biswas for a sum of Rs 18700/- on 2.4.1984 ? OPP
2. Whether the defendant received Rs 18700/- from the plaintiffs on that day and executed an agreement to mortgage the suit land in favour of the plaintiffs ?OPP
3. Whether possession of the said land was delivered to the plaintiffs at the time of execution of agreement to mortgage?OPP
4. Whether the defendant dispossessed the plaintiffs from the said land a few days back inspite of the stay order of dispossession ?OPP
5. Whether the defendant has sold 8 bighas 15 biswas of land out of the said land ?OPP
6. Whether the plaintiff is entitled to recover Rs 18700/- from the defendant along with interest @1% p.m. ?OPP

7. Whether the impugned agreement is the result of fraud and misrepresentation and is without consideration?OPD
8. Whether the suit is not maintainable in the present form?OPD
9. Whether the plaintiffs are money lender and have got no money lending licence? If so its effect?OPD
10. Relief.

The plaintiffs in their evidence examined Bahadur Singh as PW1, Jagdish Singh as PW2, the plaintiff Duni Chand testified as PW3 and and Surjit Singh as PW4.

On the other hand, defendant examined himself as DW1.

Upon hearing the parties, the court of learned Sub Judge Ist Class, Nabha through judgment and decree dated 17.3.1987 decreed the suit of the plaintiff for the recovery of Rs 18700/- with interest @ 12% per annum from 2.4.1984 till institution of the suit and future interest @ 6% per annum from the date of institution of the suit till its realization.

The same was challenged by unsuccessful defendant before the court of learned District Judge and vide impugned judgment dated 17.3.1989 the appeal of the appellant was dismissed leaving the parties to bear their own costs that is how the parties are before this Court.

Heard.

The lone contention raised by counsel for the appellant is that it is the own stand of the plaintiffs that it was on 2.4.1987 the stipulation of mortgage deed was made whereas the suit has been filed on 8.11.1985 much

prior to that date and therefore, the same was premature and no cause of action has arisen at that point of time. The same was controverted by counsel for the respondents on the grounds that the cause of action accrued when the plaintiffs were dispossessed from the property and the appellant-defendant had sold off major portion of the property which has led to the filing of the suits.

Appreciating the submissions of the two sides, the simpliciter stand of the defendant Jaswant Singh denying having ever executed the agreement has never been refuted to the hilt neither he has examined any witness in support of his contentions nor could prove that the alleged document does not bears his thumb impressions/signatures as no Expert has been examined nor any independent corroboration has come about. The plaintiffs in their evidence have proved the agreement as Ex. P1 and PW2 and PW4 have categorically stated payment of Rs 18700/- was made in their presence being amount for execution of mortgage agreement. Counsel for the defendant upon whom the onus has shifted has failed to rebut it as has been rightly concluded by the courts below while returning findings on issue nos. 1 and 2. More so this plea that has sought to be raised that the suit is premature does not convinces the Court as the plea of the plaintiffs in their plaint that defendant is selling off major chunk of land in question and had dispossessed the plaintiffs and they have secured stay orders have not at all refuted by the defendant in his written statement or his testimony as DW1 and therefore, invariably admits the same and thus in the light of this

submission, the lone argument that has been sought to be raised by the counsel for the appellant does not carries any weight. In the impugned findings the courts below have rightly concluded that though the defendant has taken the plea of fraud but has not spelled out any details of the fraud when independent witnesses have come forward in support of the plaintiffs stand as to the payment of money in question and rather on behalf of defendant a suggestion has been put to Duni Chand plaintiff that this agreement was scribed in settlement of previous outstanding dues of the defendant and therefore certainly admits owing Rs 18700/- towards plaintiffs. Conclusion drawn by the impugned findings certainly is perfect and in consonance with the principles of Evidence Act.

No other argument was raised by any of the sides.

In the light of what has been discussed and detailed above, there is no illegality in the concurrent findings of the two courts below and the same needs to be upheld. The appeal being without merit is dismissed.

May 30, 2018
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?

Yes/No

Whether Reportable ?

Yes/No