

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

RSA No.269 of 2010 (O&M)

Date of decision : 02.11.2018

Kali Ram

...Appellant

Versus

Ram Kumar (deceased) through LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajinder Goyal, Advocate for the appellant.

Mr. Jyoti Prasad Sharma, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.1-appellant is in the Regular Second Appeal against the judgments passed by both the Courts below.

The question which needs consideration is whether a registered sale deed executed by the mother in favour of his son with whom she was residing, can be set aside simply on the basis of the certain contradictions with regard to time and manner of payment of the sale consideration?

Undisputed facts are that late Smt. Phulma, widow of late Sh. Shambu, was owner of the property in dispute. She initially sold through a registered sale deed some part of the property i.e. 1 kanals to Raj Pal vide registered sale deed dated 08.02.1996. Thereafter, she transferred through registered sale deed remaining land measuring 4 kanals 14 marlas in favour of his son Kali Ram, the appellant, vide registered sale deed dated

31.03.1999. After a period of more than a year and half, Smt. Phulma is alleged to have filed a suit challenging the sale deed on the ground that it is result of fraud, however, she could not appear in evidence as she died.

Both the Courts after examining the evidence have concurrently found that the plaintiff or her LRs have failed to prove the fraud, however, both the Courts have taken a view that since the payment of the sale consideration is not proved, therefore, the sale deed is void and hence, set aside. Learned trial Court has put onus on the appellant to prove the payment of the sale consideration. In the sale deed, it has been mentioned that the amount has already been received by the Vendor. It may be noted here that the sale deed bears not only the photograph of the seller but also of the purchaser. The thumb impressions of the Executant-Vendor-Late Smt. Phulma are not disputed.

On reading oral evidence of Ram Kumar who is another brother of the defendant-appellant, it is apparent that Smt. Phulma, their mother used to reside with Kali Ram, the appellant herein. It has also come in evidence that their father had taken a loan and the defendant-appellant had deposited ₹22,500/- in order to repay that loan.

Learned Courts have drawn, assumption against the appellant on the ground that in the sale deed, it is mentioned that the entire sale consideration has already been paid. However, when the defendant-appellant appeared, he stated that he had deposited ₹22,500/- in the bank to square off the loan and the remaining amount was paid to the mother subsequent to the execution of the sale deed.

As per Section 55(4)(b) of the Transfer of Property Act, if it has

been written in the sale deed that the title has passed on the execution of the sale deed, the non-payment of the sale consideration would at the most be recoverable and would remain charge on the property sold/transferred.

In view thereof, learned trial Court as well as First Appellate Court committed an error in recording that the sale deed without consideration is void. Further, the sale consideration can be paid in past, present or future. Here was a case where the transaction was between the mother and son. The plaintiff has not produced any evidence to prove that ₹22,500/- had not been deposited by the defendant-appellant. It is also undisputed that the mother was residing with defendant-appellant. In such circumstances, once both the Courts had concurrently found that the plaintiff has failed to establish the plea of fraud, the Courts committed an error in declaring the sale deed to be void only on the basis of contradiction in the manner and time of payment of the sale consideration.

In view of the aforesaid, question of law as framed earlier is answered in favour of the appellant. Judgments and decrees passed by both the Courts below are set aside.

Regular Second Appeal is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

02.11.2018

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No