

In the High Court of Punjab and Haryana at Chandigarh

RSA- 1290 of 2016(O&M)

Date of Decision:20.9.2018

Giriraj

---Appellant

vs.

Harpal Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Varun Gupta, Advocate
for the appellant

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for declaration filed by the plaintiff-appellant was dismissed by the trial court on 30.11.2012 and appeal preferred by unsuccessful plaintiff-appellant was dismissed by the Additional District Judge, Narnaul.

The parties to the lis are real brothers being sons of Ganpat Singh. Registered sale deed No. 1052 dated 30.7.1987 in respect of land measuring 6 kanal 15 marlas was executed by the appellant in faovur of respondent-defendant. The grievance of the appellant is that he had sold land measuring 5 kanals vide the aforesaid sale deed but inadvertently the sale deed pertains to land measuring 6 kanal 15 marlas which is wrong,

illegal, null and void to the extent of land measuring 1 kanal 15 marlas.

Counsel for the appellant has assailed findings of the courts primarily by relying upon agreement Ex. PW3/B purported to be executed between the parties on 18.9.2007 wherein the respondent-defendant admitted that sale deed was intended to be executed for land measuring 5 kanals as against 6 kanal 15 marlas mentioned therein. The trial court has rejected the agreement Ex. PW3/B on two grounds. i.e. the document cannot be admitted in evidence for want of registration and the same has not been executed by the respondent voluntarily and is the result of undue pressure as admitted by Surender Singh PW4 and Babu Lal PW5.

Counsel for the appellant would argue that in view of clear admission made by the respondent-defendant that sale deed was intended to be executed in respect of land measuring 5 kanal in place of 6 kanal 15 marlas, no further evidence was required to be adduced by the appellant to substantiate his plea in this regard. To assail findings of the courts that the agreement Ex. PW3/B is not the result of free consent or the same is the result of undue influence, counsel would urge that no criminal proceedings were pending before execution of writing Ex. PW3/B rather the respondent-defendant made certain complaints to authorities after execution of Ex. PW3/B on 18.9.2007.

I have heard counsel for the appellant, perused the paper book and copies of various documents made available during the course of hearing.

Admittedly, the appellant executed the sale deed in respect of land measuring 6 kanal 15 marlas in July 1987. The appellant has sought to

get rectify the sale deed by relying upon agreement Ex. PW3/B dated 18.9.2007.

As per the settled position in law, if a person wants to relinquish his right in immovable property of the value of more than Rs. 100/-, the same can be enforced by execution of a registered document. Perusal of Ex. PW3/B would reveal that it was an agreement between the parties for cancellation of the sale deed qua land more than 5 kanal and in case of failure of the defendant to do the needful, the respondent-plaintiff was given liberty to get the same through process of the Court. The appellant did not file any suit seeking specific performance of the agreement. On the contrary, he has sought declaration by relying upon agreement Ex. PW3/B which is not a registered document. This apart, findings of the courts that this document is not the result of free consent of the respondent or the same is the result of undue influence because of the appellant having approached the police and got registered a criminal case with Police Station, Ateli on 13.9.2007, do not suffer from an error much less perversity in view of the facts elicited in cross examination of Surender Singh PW4 and Babu Lal PW5, the marginal witnesses of agreement Ex. PW3/B.

The respondent had raised a categorical plea in response to para 5 of the plaint that the plaintiff has been quarreling with the defendant for grabbing the property after a gap of 20 years from the sale deed. The plaintiff made a false report against the defendant in Police Station, Ateli in September 2007. The plaintiff got fabricated false injuries, got prepared a false MLR and lodged a false report in Police Station, Ateli.

The defendant was repeatedly called in Police Station, Ateli, tortured mentally and physically and was terrorized. He was pressurized by the plaintiff with the help of police and succeeded in getting a false writing dated 18.9.2007 which is not a voluntary and conscious act of the defendant. The defendant had immediately made a complaint in this regard to the higher authorities on 19.9.2007. The allegations raised in the written statement coupled with the facts elicited in cross examination of witnesses of the plaintiff as well as defendant Harpal Singh, falsifies contention of the appellant that prior to execution of Ex. PW3/B, no criminal proceedings were initiated at the behest of the appellant against the respondent. Counsel for the appellant has failed to advance any arguments much less meaningful that consistent findings by the courts that writing Ex. PW3/B is the result of undue influence suffer from an error much less perversity. That being so, the appellant cannot derive any advantage to his contention by relying upon writing Ex. PW3/B which has been rightly rejected by the courts.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

20.9.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No