

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

RSA No.1635 of 2016 (O&M)

Date of decision:14.11.2018

Darbara Singh

... Appellant

Vs.

Dev Raj and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. J.K.Singla, Advocate
for the appellant.

Mr. P.K.S.Phoolka, Advocate
for the caveator/respondent.

AMIT RAWAL J. (Oral)

Appellant-defendant no.1 is in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit of the plaintiff-respondent no.1 for declaration on the basis of the registered sale deed, has been decreed.

The plaintiff instituted the suit claiming ownership and possession of land measuring 2 kanals on the basis of the sale deed 29.06.1987 executed by defendant no.1- Darbara Singh and sought setting aside of the various sale deeds executed post the sale deed of the plaintiff. It was alleged that defendant had sold the land for a valuable consideration and therefore, had no right to further alienate the suit land without any title.

The appellant-defendant opposed the aforementioned suit on

the ground that sale deed was never executed by him and was a result of fraud and mis-representation. The plaintiff examined as many as four witnesses and brought on record the documentary evidence, i.e., Ex.P1 to Ex.P11. On the other hand, defendant himself appeared as DW1 and closed the evidence.

On the basis of the evidence, the trial Court decreed the suit and set aside all the sale deeds executed post the sale deed of the plaintiff in respect of the suit land. The appeal as indicated above has also been dismissed.

Mr. J.K.Singla, learned counsel appearing on behalf of the appellant submitted that plaintiff had not been able to prove the execution of the sale deed, much less passing of the consideration. PW3-Jora Singh did not prove the sale deed. In such circumstances, the Court below should not have granted the declaration. PW4-Harpal Singh also disclosed the fact, beyond pleadings, which could not be looked into.

I am afraid the aforementioned argument is not sustainable in the eyes of law, for, provisions of Order 6 Rule 4 CPC, envisaging fraud and misrepresentation is not only to be pleaded but proved, have not been complied with, nor any counter claim was filed for challenging the registered document which can only be challenged in civil suit in view of the law laid down by **Satya Pal Anand Vs. State of M.P. and others 2016 (4) RCR (Civil) 904**. In such circumstances, defendant no.1 could not have sold the disputed land by virtue of subsequent sale deeds.

I cannot remain unmindful of the fact that judgment and decree is only confined to the particulars of the land mentioned in the sale deed dated 29.06.1987. It is also a matter of record that plaintiff had proved the ownership of defendant no.1 by proving on record the sale deed dated 17.05.2004, thus, argument of Mr. Singla, is not able to bring the case within the realm of illegality and perversity. No substantial question of law arises for adjudication of the present appeals.

The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

November 14, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No