

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

RSA No.2762 of 2016(O&M)
Date of decision: 08.05.2018

Balwinder Singh

... Appellant

Versus

Tejwant Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. NS Diwana, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the appellant-plaintiff was dismissed by the trial Court, vide judgment and decree dated 07.01.2015. As even the appeal against the said decree failed and was dismissed by the appellate Court on 22.01.2016, he is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff sought a declaration that the sale deed dated 30.05.2011 executed by him in favour of the defendants regarding a land measuring 01 kanal 01 marla was illegal, null and void, being without consideration, and was thus liable to be set aside. In the alternative, he claimed a decree for a sum of Rs.1,73,125/- i.e. the balance sale consideration with interest from the date of the sale deed till its realization. In brief, the case set out by the plaintiff was that agreement to sell was entered into between the parties, and as per the terms thereof, the defendants had to pay Rs.1,73,125/- as sale consideration. But on the date of execution of the sale deed on 30.05.2011, the defendants paid only Rs.50,000/- to the

plaintiff and assured that the balance amount shall be paid within 2/3 days. Finally the sale deed was executed in favour of the defendants. A receipt was also executed that a sum of Rs.20,875/- were payable, but even the said amount was not paid by the defendants. The plaintiff requested the defendants to pay the balance sale consideration i.e. Rs.1,73,125/-, but to no avail. Thus, the suit.

In the written statement filed on behalf of the defendants, it was pleaded that the plaintiff had executed the sale deed dated 30.05.2011 in favour of the defendants on receipt of a full consideration. Thus, they were the owners in possession of the suit property.

On a consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that onus to prove that the sale deed, dated 30.05.2011 (Ex.P2), was executed without consideration, was upon the plaintiff. And to discharge the onus, the plaintiff examined Jaspal Kaur (PW1), who happened to be his sister as also the power of attorney holder of the plaintiff. However, Jaspal Kaur (PW1), conceded in her cross-examination that she did not know the contents of her affidavit, the factum of exchange of sale consideration, and even the fact whether any sale consideration was exchanged on the date of the execution of the sale deed or not. In fact, she deposed that the plaintiff was a habitual drunkard and she did not believe him much. Apart from her, no other witness was examined. Further, the evidence on record proved that plaintiff was hale and hearty, and yet did not appear in support of his claim. Thus, an adverse inference was drawn against him, for his testimony could have been the best possible evidence. As per the contents of the sale deed dated 30.05.2011 Ex.P2/Ex.D2, the entire sale consideration was paid at home and thereafter

the sale deed was registered. Gurwinder Singh DW1, who happened to be the marginal witness of the sale deed, admitted in his cross-examination that the sale consideration i.e. Rs.3 Lakh, were already given to the plaintiff. In fact, on the same day i.e. 30.05.2011, two sale deeds were executed by the plaintiff for two separate parcels of land, which were Ex.P2/Ex.D2 and Ex.D1, and the total sale consideration of these two sale deeds come to Rs.3 Lakh. The registration of the sale deed was duly proved by examining Registration Clerk Amritpal Kaur DW3. The plaintiff had even contested the mutation that was sought to be sanctioned in favour of the defendants on the basis of the sale deed in question, but the application moved in this regard by the plaintiff was rejected by the Collector, vide order dated 30.07.2014 i.e. Ex.D3 and Ex.D4. Ex facie, the plaintiff failed to substantiate his claim. Thus, it could not be said that sale deed Ex.D1 was invalid being without consideration.

Learned counsel for the appellant-plaintiff merely reiterated the submissions that were advanced and duly dealt with by both the Courts. On being pointedly asked, he could not refer to anything on record to show if the findings recorded by the Courts below were either contrary to the record or suffered from any material illegality. No other argument was advanced. No question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

08.05.2018
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO