

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

RSA No.2836 of 2016(O&M)
Date of decision: 08.05.2018

Balwinder Singh

... Appellant

Versus

Tejwant Kaur and another

... 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 27.03.2015. 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 filed a suit for declaration that the sale deed dated 30.05.2011, executed by him in favour of defendant No.1, regarding a land measuring 01 kanal 02 marlas, situated in village Kakot, Tehsil and District Ropar, was illegal, null and void, being without consideration, and was a result of fraud. By way of consequential relief, a decree for injunction was also claimed restraining the defendants from causing any interference in the peaceful possession of the plaintiff as also from alienating the suit land. In the alternative, a decree for recovery of Rs.1,83,075/- was claimed along

with interest @ 18% p.a. from the date of the sale deed i.e. 30.05.2011 till its realization.

In brief, the case set out by the plaintiff was that he happened to be the owner of the suit property and had entered into an agreement to sell with defendant No.1. In terms of the agreement, defendant No.1 was required to pay Rs.1,83,075/- to the plaintiff at the time of execution of the sale deed on 30.05.2011. However, defendant No.1 only paid a sum of Rs.8200/- to the plaintiff in the presence of the witnesses when the sale deed was executed, for, he assured that the balance consideration shall be paid within 2-3 days. The defendants also procured the signatures of the plaintiff on the receipt of Rs.20,875/-, but even the said payment was not made. Thus, the suit.

In the written statement filed on behalf of the defendants, it was pleaded that the plaintiff himself had executed a sale deed in favour of the defendants in the office of Sub Registrar Ropar after receiving the full consideration. The present suit was filed just to harass the defendants by concocting a false story.

On a consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that on 30.05.2011, plaintiff Balwinder Singh had executed two sale deeds in favour of the defendants; one as regards a land measuring 01 kanal 01 marla (Ex.D1) and the other with regard to an area measuring 01 kanal 2 marlas the sale deed which is in dispute (Ex.D2/Ex.P3). The execution of the sale deed dated 30.05.2011 was duly proved by the defendants by examining one of the attesting thereto i.e. Gurvinder Singh (DW1). Likewise, the registration of the sale deed in question was also proved by Amritpal Kaur (DW3), Registry Clerk. Thus,

the onus to prove that the sale deed dated 30.05.2011 was executed without consideration was upon the plaintiff. Concededly, the plaintiff never stepped into the witness box to prove his claim. However, his real sister, namely, Jaspal Kaur @ Harpal Kaur, who also happened to be his attorney, appeared as PW1. Significantly, she conceded in her cross-examination that Balwinder Singh her brother had executed the sale deed qua a land measuring 01 kanal 02 marlas in favour of Tejawant Kaur. She further admitted that the plaintiff had received Rs.1,45,000/- as consideration for the suit property. Not just that, even Mohan Singh (PW2) the marginal witness of the sale deed conceded not only the execution of the sale deed but also passing of the sale consideration in favour of the vendor. Further, the evidence on record showed that plaintiff Balwinder Singh was hale and hearty and could appear in Court, therefore, he was the best witness to depose as regards non-receipt of the sale consideration. But he did not choose to appear for the reasons best known to him. As per the recitals in the sale deed in question (Ex.P3/Ex.D2), the entire sale consideration was paid at home and thereafter the sale deed was registered. Tejawant Kaur (DW2) testified in her deposition that the entire sale consideration i.e. Rs.3 lakh, had already been paid. As indicated above, on the same day i.e. 30.05.2011, two sale deeds i.e. Ex.P3/Ex.D2 and Ex.D1 were executed by the plaintiff and the total sale consideration of these two sale deeds comes to Rs.3 lakh. Ex facie, the plaintiff failed to substantiate his claim. Thus, it could not be said that sale deed in question was invalid being without consideration.

Learned counsel for the appellant-plaintiff merely reiterated the submissions that were advanced and duly dealt with by the Courts below. On being pointedly asked, he could not refer to anything on record to show if

the findings recorded by both the Courts 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.

08.05.2018
Rajan

(Arun Palli)
Judge

Whether speaking / reasoned:
Whether Reportable:

YES
NO