

Brief facts of the case are that Ram Kumar (since deceased), now through his LRs, had filed a suit against Balbir (defendant) now represented by his LRs and Sunil son of Balbir for possession of land measuring 8 marlas. It was claimed that defendant No. 1 being the owner of said land sold the same to plaintiff, vide sale deed dated 5.4.1999 for a sale consideration of Rs. 5,500/-. It was claimed that about 3 months before the filing of suit, defendant illegally occupied the land.

In the written statement, defendant took the plea that about 15-16 years back, defendant No. 1 had taken the land of plaintiff on payment of one fourth share as batai. He cultivated the said land for five years and thereafter stopped cultivating the land. Thereafter, plaintiff started saying that defendant No. 1 owe some money to plaintiff. It is further stated that in those days i.e. about 10 years back, plaintiff got defendant No. 1 kidnapped and was kept under intoxication. During that period, his thumb impressions were obtained on blank papers. No sale consideration was passed. Defendant No. 1 denied to have executed the sale deed. He also denied the receipt of sale consideration.

From the pleadings, following issues were framed :-

1. Whether the plaintiff is entitled to decree for possession as alleged in the head note of the plaint ? OPP
2. Whether the suit of the plaintiff is not maintainable in present form ? OPD
3. Whether the plaintiff has no cause of action or locus standi to file the present form ? OPD
4. Whether the plaintiff is stopped by his own act and conduct from filing the present form ? OPD
5. Relief.

The learned Additional Civil Judge (Senior Division), Siwani Camp at Bhiwani, while appreciating the evidence after examining the statements of witnesses noticed that defendant has died. His son Sunil appeared as DW1 and denied execution of sale deed. The trial Court took the view that though in the plaint it is stated that land was sold for Rs.5,500/- but in cross examination, plaintiff has stated that defendant owed Rs. 40,000-45000/- and it was set off towards sale consideration. No money

was paid at the time of execution of sale deed. It further took note of the fact that apparently the possession was never handed over to plaintiff. Defendant was working as Seri with plaintiff. The sale deed was executed in the year 1999 and till year 2009, no suit was filed. Defendants had claimed that they have constructed a house over the disputed land and witness of plaintiff stated that land was given to defendants by plaintiff. Therefore, it was held that plaintiff has failed to prove that on the basis of sale deed, he is entitled to decree for possession. The said findings were affirmed in appeal.

I have heard the learned counsels for parties and have also carefully gone through the file as well as the lower Court record.

After examining the lower Court record, this Court finds that following law points arise for adjudication :-

- '(1) Whether a suit for possession on the basis of sale deed could be dismissed without defendant seeking cancellation of the sale deed ?
- (2) Whether the Court can set aside the sale deed merely on account of discrepancy in the statements of witnesses without defendant making any counter claim for setting aside the sale deed on certain grounds ? '

It comes out that the sale deed (Ex.PW3/A) shows that it was a registered sale deed which bears the photograph of plaintiff as well as of defendant No. 1. The sale deed was scribed by a regular deed writer Sanjay Kumar and witnessed by two persons, namely, Ajad Singh, Lambardar as well as Vinod Kumar. The sale deed bears the thumb impression of defendant No. 1 on all the pages and also on the back of the first page where

the deed was recorded to be registered. The Sub Registrar has recorded that Balbir (defendant) appeared before him and admitted execution of sale deed. In this way, it is clear that after verifying from defendant No. 1 that he has received sale consideration, sale deed was registered. There is presumption to the registered document. The stand of defendant in this case is that about 15-16 years back, he was working as a Seri with plaintiff. He did so for five years and thereafter, stopped cultivating the land of plaintiff. In those days, plaintiff had claimed that some amount was due to defendant No. 1. Therefore, defendant No. 1 was kidnapped. He was kept under intoxication and it was during this period that his thumb impressions were obtained on several papers. Surprisingly, said defence of sale deed being executed by kidnapping defendant No. 1 and keeping him under intoxication was never proved by leading any evidence. Defendant did not prove his defence before the trial Court. Even if defendant claimed that sale deed was got executed by way of intoxicating him and kidnapping him, he should have made a counter claim for cancellation of the sale deed. From the year 1999 till date, neither any counter claim was made in the suit nor any separate suit was filed seeking cancellation of sale deed on certain grounds.

The learned counsel for respondent has argued that witnesses have admitted that nothing was paid at the spot. Even if, it is so, sale deed cannot be set aside without making any claim for the same. Once the sale deed is there and same is not challenged by defendant by seeking its cancellation, the rights accruing under the sale deed have to be enforced. Both the Courts below took it as if it is a suit for cancellation of sale deed and took note of the fact that sale consideration was not paid at the spot and that possession was never parted with. Infact, it was a suit filed

by plaintiff for possession on the basis of sale deed. Therefore, without setting aside the sale deed, possession could not be declined. The rights accruing under the sale deed have to be enforced. Therefore, both the Courts below erred in law in declining the relief for possession merely on the basis of some discrepancy in statements of witnesses regarding time when possession was parted with and for which purpose the same was parted with by plaintiff to defendant. As such, findings of both the Courts below on all the issues are reversed. The judgment and decree dated 29.9.2011, passed by the learned Additional Civil Judge (Senior Division), Siwani Camp at Bhiwani, as well as judgment dated 4.8.2014, passed by the learned Additional District Judge, Bhiwani, are set aside being perverse and against law. The law point is accordingly decided holding that suit for possession on basis of sale deed cannot be dismissed without defendant seeking cancellation of sale deed. Further, the Court cannot set aside the sale deed merely on account of discrepancies in the statements of witnesses without defendant making any counter claim for setting aside the sale deed on certain grounds. Consequently, present appeal is allowed. A decree for possession of suit land fully detailed in the head note of plaint is passed in favour of plaintiff and against defendants. Costs of the suit allowed throughout. Since main case has been allowed, therefore, pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

3.4.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No