

RSA No.2476 of 2015 (O & M)
RSA No.2498 of 2015 (O & M)
RSA No.4583 of 2015 (O & M)

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

RSA No.2476 of 2015 (O & M)
Date of Decision:23.05.2018

Mukhtiar Singh through his LR Balwinder Singh ...Appellant

Versus

Sukhwinder Kaur ...Respondent

RSA No.2498 of 2015 (O & M)
Date of Decision:23.05.2018

Makhtiar Singh (deceased) ...Appellant

Versus

Sher Singh ...Respondent

RSA No.4583 of 2015 (O & M)
Date of Decision:23.05.2018

Makhtiar Singh (deceased) ...Appellant

Versus

Sher Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.S. Bhatti, Advocate and
Mr. R.S. Rekhi, Advocate
for the appellant.

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Mr. B.R. Mahajan, Senior Advocate with
Mr. Prateek Mahajan, Advocate and
Ms. Manpreet Ghuman, Advocate
for the respondent-Caveator.

ANIL KSHETARPAL, J.

Plaintiff through his legal heirs have filed these three regular second appeals arising from three separate suits filed which are connected. Learned counsel for the parties are also agreed that these three appeals can be disposed of by a common judgment.

Mukhtiar Singh was owner of 48 kanals and 16 marlas of land. He was having two daughters namely Balwinder Kaur and Sukhwinder Kaur. It is alleged that Mukhtiar Singh executed a Will in favour of his two daughters on 21.08.2006. Thereafter, Mukhtiar Singh executed three instruments, on 06.11.2006 relinquishment deed executed in favour of daughter Sukhwinder Kaur with respect to land measuring 17 kanals and 8 marlas and two registered sale deeds in favour of his nephews with respect to land measuring 22 kanals, 19 marlas and 8 kanals, 9 marlas respectively. The registered sale deeds as well as relinquishment deed also have photographs of the executant as also Sub Registrar and attesting witnesses. Sukhwinder Kaur is present in almost all the photographs standing along with her father. These three deeds of transfer have been challenged by Mukhtiar Singh by filing these three suits. It is pleaded that the aforesaid sale deeds and relinquishment deed are result of misrepresentation as he was taken to Civil Hospital, Ajnala on the pretext of better treatment and thereafter, sale deeds/transfer deeds were procured by way of fraud and misrepresentation.

Defendants in all the cases contested the suit and pleaded that

the registered sale deeds as well as transfer deeds were executed in a sound and disposing mind and mutation of the aforesaid transfer deeds was sanctioned on 19.01.2007.

Both the Courts after appreciation of evidence available on the file, have dismissed all the three suits. This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts and the record.

Learned counsel for the appellant has submitted that Mukhtiar Singh had no legal necessity to sell the property. He has further submitted that Mukhtiar Singh was 80 years old and he was not keeping good health. He has also drawn attention of the Court to the statement of a doctor while submitting that Mukhtiar Singh used to take treatment for a mental disorder. He has further submitted that the market value of the property was much more than what was depicted as a consideration in the sale deeds and, therefore, sale deeds are required to be set aside.

On the other hand, learned counsel for the respondent has pointed out that the plaintiff did not appear in evidence so that other party has opportunity to cross-examine. If a fraud is being pleaded it was the duty of the plaintiff to appear in evidence. He pointed out that the issues in the present case were framed on 21.08.2007 and thereafter the plaintiff was alive for more than 2 ½ years. Plaintiff appeared only through attorney, the second daughter Balwinder Kaur. He has further pointed out that in the absence of any evidence of fraud, sale deed and release deed cannot be set aside only on the basis of suspicion.

This Court has considered the submissions. Mukhtiar Singh was

absolute owner of the property. As earlier noticed, Mukhtiar Singh executed two sale deeds in favour of his nephews namely Savinder Singh, Pargat Singh and Sher Singh. Sale deeds were not executed in favour of stranger. On the same day, Mukhtiar Singh also executed a relinquishment deed in favour of Sukhwinder Kaur, the daughter, with respect to the land measuring 17 kanals and 8 marlas. It has also come in evidence that after receipt of the sale consideration Mukhtiar Singh distributed the amount received amongst his daughters. Hence, this Court does not find any substance in the argument of learned counsel with regard to absence of legal necessity.

Second submission of learned counsel for the appellant is that Mukhtiar Singh was not keeping good health and was ill. As per Ex.PW-6/A, Mukhtiar Singh was admitted in hospital on 17.04.2007 and discharged on 19.04.2007, whereas the sale deed and the relinquishment deed were executed on 06.11.2006. Learned counsel for the appellant has drawn attention of the Court to the statement of doctor Somil Kansal, who has appeared as PW-6. He also admits that Mukhtiar Singh was admitted on 17.04.2007 and discharged on 19.04.2007. However, doctor further says that he was admitted with the complaint of memory deficit for last 5 to 6 months. This Court has considered the submission. In the absence of any direct evidence to prove that Sh. Mukhtiar Singh was not in mentally sound disposition on 06.11.2006, the Courts cannot record a finding only on the basis of assumption. The statement given by doctor is only on the basis of what has been recorded at the time of admission that information has been given by Mukhtiar Singh or the person, who was accompanying him.

Next argument of learned counsel for the appellant is that the

sale consideration mentioned is not comensurate with the market value of the property. This argument also does not have substance particularly when seller and purchaser are closely related. Seller is the uncle whereas purchasers are the nephews. The market value of the land further depends upon quality of the land, its location and capacity of the purchaser to negotiate. A registered sale deed cannot be set aside only on the basis of suspicion.

Learned counsel for the appellant has relied upon instructions issued by the Deputy Commissioner to determine, which are only for guidance of the registration authority. Such instructions are general in nature and cannot be treated as bench mark for determining the market value of the property and a registered sale deed cannot be set aside on the basis thereof.

Still further, if any body wanted to play fraud, the defendant nephews would have got the sale deeds executed of the entire land in their favour. As already noticed, Mukhtiar Singh was owner of 48 kanals and 16 marlas of land. Two sale deeds executed in favour of nephews is with respect to 31 kanals and 8 marlas of land whereas remaining land has been transferred to Sukhwinder Kaur, the daughter. On that day, daughter of late Sh. Mukhtiar Singh was present before the office of Sub Registrar. In the presence of daughter, Mukhtiar Singh executed these three instruments. In such circumstances, this Court does not find any ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Hence, these regular second appeals are dismissed.

23.05.2018
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(ANIL KSHETARPAL)
JUDGE