

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

RSA No.3637 of 2014 (O&M)

Date of Decision.13.11.2018

Arvinder Singh

.....Appellant

Vs

Chand Lal Bajaj Cheritable Trust, Ludhiana

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Jain, Senior Advocate with
Mr. Amit Jain, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff has not been successful in seeking declaration regarding the agreement dated 19.07.1988 and the sale deed dated 29.07.1988 in respect of the property in dispute. The thrust of challenge was that Surender Singh Grewal at the time of agreement to sell was 70 years old and was suffering from hypertension, dementia and diabetes and other was, that the property was ancestral which could not be sold except for legal necessity. He was basically of unsound mind and did not know the right and wrong being restless and confuse. The defendants are none else but the neighbours by taking the advantage of health condition of Surender Singh Grewal got the sale deed executed for a paltry amount of ₹60,000/-, as sum of ₹20,000/- was allegedly paid vide cheque at the time of execution of the agreement to sell.

The defendants opposed the suit and stated that plaintiff No.1 received sum of ₹20,000/- by payee's cheque bearing No.419260 dated 19.07.1988 and remaining of ₹40,000/- was also paid vide pay order No.939655 dated 28.07.1988 issued by Union Commercial Bank,

Dal Bazar, Ludhiana. The factum of property being ancestral was emphatically denied.

The plaintiff examined as many as 15 witnesses in support of the aforementioned averments including PW5 Dr. Rajiv Gupta and PW3 Dr. Pritpal Singh regarding the health of Surinder Grewal.

On the other hand, defendants examined 9 witnesses and brought on record documentary evidence with regard to bank statement showing encashment of pay order and deposit of ₹20,000/- in the account.

On critical examination of the evidence and pleadings, the trial Court did not grant the relief and dismissed the suit. The appeal laid before the lower Appellate Court was also dismissed.

Mr. Arun Jain, Senior Advocate assisted by Mr. Amit Jain, learned counsel appearing on behalf of the appellant submitted that both the Courts below have committed illegality and perversity in arriving at finding, as statement of doctors had been misread. Both the doctors had been consistent in explaining the disease of dementia. It was emphatically explained that possession was not handed over, though defendants alleged otherwise. A fraud and misrepresentation was committed upon the plaintiff. The suit was filed through his wife. Surender Singh Grewal had inherited the property from his forefathers and therefore, could not have executed the agreement and sale deed except for legal necessity.

I am afraid aforementioned argument of Mr. Jain is not sustainable, for, defendants have been able to prove the statement of account Ex.D5 reflecting the payment of ₹20,000/- in the account

No.2743 of Surender Singh Grewal and Rupinder Kaur Grewal. DW4 Kuldeep Kumar Singla, scribe of the sale deed categorically stated that Surender Singh Grewal, the executant, was of sound disposing mind at the time of registration and execution of the sale deed. DW5 Dalbir Chand attesting witness of the sale deed also stated in the same terms. Even ₹40,000/- was also deposited in the aforementioned account, therefore, the plea that the sale deed did not reflect the payment of amount before the Registrar, pales into insignificance. The doctors have also not explained that a person who is suffering from dementia cannot perform such acts. No medical literature in this regard had been brought on record.

The nature and character of the property being ancestral has also not been proved on record as mandatory requirement of law that it had fallen from three generation and the plaintiff No.2 was 4th generation in lineage. In the absence of such record, the inference drawn by the Courts below cannot be faulted with. All these factors weighed in the mind of the Courts below while dismissing the suit.

In my view, the arguments of Mr. Jain have not been able to bring the case within the realm of illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)

JUDGE

November 13, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No