

In the High Court of Punjab and Haryana at Chandigarh

RSA-3800 of 2014(O&M)

Date of Decision:2.2.2018

Ashok Kumar

---Appellant

vs.

Veena Walia and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ravi Malik, Advocate
for the appellant

Mr. Vishva Nath Sharma, Advocate
for caveator-respondent No. 1

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts below whereby challenge to sale deed dated 10.8.2005 being without consideration and result of fraud has been dismissed by the trial court and findings recorded by the trial court have been affirmed in appeal.

Counsel for the appellant has submitted that the sale deed in question was procured by Smt. Veena Walia, respondent No. 1 with the help of Nathi Ram, respondent No. 2 as Nathi Ram had been helping Kanwar

Singh, executant of the sale deed in his follow up treatment as Kanwar Singh was suffering from throat cancer and operated upon in Medical College, Mullana where he remained admitted for one and a half month. It is further argued that as per endorsement qua registration of the sale deed, no amount was paid by defendant No. 1 to Kanwar Singh in the presence of the registering authority, sufficient to establish plea of the plaintiffs that the sale is without consideration and has been prepared by taking advantage of feeble condition of the executant because of cancer in the last days of his life.

Counsel representing the respondents has submitted that though the suit appears to have been filed by Kanwar Singh as well but as a matter of fact, Kanwar Singh neither executed any vakalatnama in favour of the Advocate who instituted the suit nor gave any attorney to Ashok Kumar to institute the suit on his behalf. The application filed by Ashok Kumar under Order 32 Rule 15 of the Code of Civil Procedure seeking permission to file the suit on behalf of plaintiff (Kanwar Singh) being his guardian/next friend was never allowed by the Court nor any such fact was proved that Kanwar Singh was suffering from any such disability to entitle Ashok Kumar to file the suit on behalf of Kanwar Singh or pursue the litigation on his behalf. It is further argued that as Kanwar Singh did not institute a suit to challenge the sale deed in question though he remained alive till 30.7.2006, no such plea raised by the appellant that the sale deed is either without consideration or is the result of fraud is tenable much less by way of interference in consistent findings recorded by the courts below.

Another submission made by counsel is that the Court in

Appeal, on a detailed consideration of the materials on record, has affirmed findings recorded by the trial court and the appellant has failed to raise any legal issue for adjudication in the regular second appeal.

I have heard counsel for the parties, perused the paper book particularly the judgment dated 23.7.2011 passed by the Additional Civil Judge(Senior Division), Yamunanagar and dated 3.5.2014 by the Additional District Judge, Yamunanagar at Jagadhri.

Perusal of the aforesaid judgments leaves no manner of doubt that Kanwar Singh, executant of the sale deed did not file any suit in his own right nor authorised Ashok Kumar his son to institute the suit nor Ashok Kumar could substantiate his plea to be appointed as guardian/next friend of Kanwar Singh to pursue the litigation by invoking order 32 Rule 15 of the Code of Civil Procedure. Under the circumstances, suit instituted before the trial court is to be treated as a suit by Ashok Kumar.

Respondent No. 1 examined Satish Gupta, Naib Tehsildar, Thanesar DW1 to prove registration of the sale deed after the same was read over and accepted to be correct by its executant. He had deposed that prior to registration of the sale deed, he satisfied himself by asking questions from Kanwar Singh, the vendor, his son in law Nathi Ram and daughter. Kanwar Singh admitted to have received sale consideration at his house.

The courts below, on a detailed consideration and meticulous appreciation of evidence available on record, negated plea of the appellant that the sale deed is either without consideration much less the result of fraud though the necessary ingredients of fraud are missing from the

pleadings. I do not find any reason to differ with the well founded findings recorded by the courts below when otherwise, the appeal does not give rise to any question of law.

For the foregoing reasons, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

2.2.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No