

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

**RSA No.1446 of 2017 (O&M)
Date of Decision.10.12.2018**

Somoti (since deceased) through LR's and othersAppellants

Vs

Sunita and another ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Gaurav Singla, Advocate
for the appellants.

-:-

AMIT RAWAL J. (ORAL)

In pursuance of order dated 30.10.2018, costs of ₹2500/-
has been deposited vide receipt No.B/11817 dated 03.12.2018.

The appellants-plaintiffs have not been successful in
claiming declaration seeking relief of injunction by laying challenge
to the registered sale deed dated 02.11.2006 alleged executed by
plaintiff No.1 in favour of defendant No.1.

It was alleged that Moola, husband and father of the
appellants-plaintiffs was the owner of land measuring 79 kanals. He
died on 11.08.1970 and left behind his wife Somoti and two
daughters Angoori and Rajwati. The plaintiffs were flabbergasted by
noticing defendant No.1 alleged herself to be daughter to Moola
propounded the impugned sale deed without consideration as fraud
had been played upon Somoti, who was an old and illiterate person.

Defendant No.1 alleged that the sale deed was for
valuable consideration of ₹4,30,000/-, which was paid to the plaintiffs
and was attested by two witnesses. Defendant No.2 denied that
plaintiffs inherited ½ share of Moola.

Learned counsel appearing on behalf of the appellants submitted that factum of Sunita being daughter of Moola has been belied through the testimony of PW1, who brought on record PW1/A, death certificate to establish that Moola had died on 11.08.1970 whereas birth certificate of Sunita proved on record revealed that she was born on 08.12.1976. Even the Lambardar, attesting witness of the sale deed was not coherent and consistent as he did not know Moola and many other things. Ingredients of fraud and misrepresentation, thus, proved on record despite that Courts below have dismissed the suit.

I have heard learned counsel for the appellant, appraised the paper book and of the view that appellants-plaintiffs have miserably failed to prove ingredients of Order 6 Rule 4 CPC as registration clerk of the sale deed has also been brought on record to establish the factum of sale deed. Somoti had become the absolute owner on demise of Moola. It is common practice amongst persons, who first enter into document and resile by taking pleas. Even if Sunita was not daughter of Moola, it would not make any difference, for, it was a direct sale by Somoti in her favour, which was not of entire land but only a piece of land measuring 13 kanals 4 marlas. Plaintiffs have miserably failed to prove non-receipt of the sale consideration.

The appeal is accompanied by application seeking condonation of delay of 184 days in filing the appeal. No cogent and plausible reasons have been given for condonation of delay.

No ground for interference is made out, much less, no

substantial question of law arises for determination by this Court.

Resultantly, the second appeal is dismissed on the ground of delay as well as on merit.

(AMIT RAWAL)
JUDGE

December 10, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No