

109

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

**RSA No.1562 of 2018 (O&M)
Date of Decision: 16.07.2018**

GURDEEP KAUR AND ANR

.....Appellants

Vs

GURNAM SINGH

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Bhanu Pratap Singh, Advocate
for the appellants

RAJ MOHAN SINGH, J. (Oral)

[1]. Defendants are in Regular Second Appeal against the concurrent findings recorded by the Courts below in a suit for declaration, permanent injunction and joint possession.

[2]. Brief facts are that the plaintiff filed a suit challenging the sale deed dated 09.05.2006 to be illegal, null and void. Permanent injunction was also sought restraining the defendants not to deny title of the plaintiff. A joint possession was also sought alternatively.

[3]. Plaintiff is real uncle of defendant No.2 Lakhwinder Singh. The house in question was constructed by the plaintiff

through defendant No.2 after spending an alleged amount of Rs.40 lakhs. Defendant No.2 was in-charge of the site and was controlling the affairs of the house. Defendant No.2 was appointed as General Power of Attorney by the plaintiff to manage the construction over the site and also to pursue income tax proceedings. General Power of Attorney was executed on 01.09.2005 and the same was cancelled on 27.10.2006 in the office of Registrar. Defendant No.2 being incharge sold the property in question vide sale deed dated 09.05.2006 in favour of his wife/defendant No.1 for an alleged sale consideration of Rs.5,52,000/-.

[4]. The suit was contested by defendant No.2. He admitted that an amount of Rs.25 lakhs was spent on the construction out of which he contributed Rs.5 lakhs. He further asserted that the General Power of Attorney was lawful and the same was never cancelled. The sale deed executed by defendant No.2 in favour of defendant No.1 was for lawful consideration and was legal.

[5]. Both the Courts below have concluded that passing of consideration of Rs.5,52,000/- by defendant No.1 in favour of defendant No.2 became an onerous when defendants No.1 and 2 are husband and wife. As per provision of Indian Contract Act, an agreement without consideration is void. Admitted cost of construction of the house in question was Rs.25 lakhs. The

alleged sale consideration depicted in the sale deed to the tune of Rs.5,52,000/- was nothing, but an eyewash. Ex.PW-2/B showed that the sale consideration was given to defendant No.2 by defendant No.1 prior to execution of sale deed. Defendant No.1 testified in her affidavit Ex.DW-2/A that defendant No.2 received an amount of Rs.5,52,000/- earlier and the said amount was given to the plaintiff. Cross-examination of the witness further showed that she brought Rs.5,52,000/- from her parents and the said fact was mentioned in her examination-in-chief Ex.DW-2/A. The capacity of the parents to pay the aforesaid amount could not be brought on record, nor the parents were examined.

[6]. It was further concluded that major contradiction crept in the testimonies of DW-1 and DW-2. DW-1 in his examination-in-chief testified that he earlier spent an amount of Rs.5 lakhs on the construction of the house and on execution of sale deed dated 09.05.2006 sale consideration of Rs.5,52,000/- was handed over to the plaintiff. The affidavit executed by DW-1 testified that the plaintiff had already received the amount from him and he was having no right to recover the sale consideration. DW-2 Gurdeep Kaur stated in her statement that the amount was handed over to the plaintiff, but with the aforesaid contradiction with the statement of Lakhwinder Singh,

who had testified that the plaintiff was not entitled to receive any amount of Rs.5,52,000/-. Defendants No.1 and 2 being husband and wife could not prove passing of consideration for which they were legally liable to prove the sale deed dated 09.05.2006 which was found to be without consideration. The consideration shown in the said sale deed was drastically inadequate even as per admitted case of the defendants. Even an attempt was made by the defendants to create 3rd party interest as some part of the property was allegedly sold to one Pritam Singh, though subsequently, the property reverted back to the defendants on the basis of compromise dated 02.12.2008.

[7]. The plaintiff has successfully proved his case. The Courts below have appreciated the evidence and inadequacy of sale consideration shown in the sale deed dated 09.05.2006. The present appeal neither involves any question of law, nor the same is on account of any misreading of evidence or perversity recorded by the Courts below.

[8]. In view of above, no ground is made out for interference in the Regular Second Appeal. The same is accordingly dismissed.

[9]. Since the main appeal has been dismissed on merits, therefore, there is no necessity of passing any order in the

application for condonation of delay of 40 days in filing the present appeal.

July 16, 2018

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No