

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

R.S.A No.2271of 2017(O&M)

Date of decision :11.07.2018

Haneefa and others

..... Appellants

Versus

Kamaldeep Singh and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. S.K.Arora, Advocate
for the appellants.

LISA GILL,J

The present appeal has been directed against judgment and decree dated 10.02.2016 passed by the learned Civil Judge (Sr. Division), Ferozepur, whereby the suit filed by the appellant-plaintiffs has been dismissed as well as judgment and decree dated 14.10.2016 passed by the learned Additional District Judge, Ferozepur, whereby their appeal has also been dismissed.

Brief facts necessary for the adjudication of the case are that the appellant-plaintiffs filed a suit seeking declaration to the effect that they are owners in equal share of the suit land as detailed in the plaint and further that sale deed dated 12.09.2008 executed by Khushia son of Farida and the subsequent mutation bearing No. 666 on its basis are illegal, null and void having no effect on their rights.

It was pleaded that father of the appellant-plaintiffs namely Khushia died on 14.10.2008 leaving behind the appellants as his only legal heirs. The defendant-respondents have no concern with the suit property. During the lifetime of Khushia, one Jota son of Amanat used to

cultivate the suit land. After Khushia's death, the appellants on inquiry came to know that the suit land had been transferred in favour of the defendants on the basis of a sale deed dated 12.09.2008 allegedly executed by Khushia in their favour. It was further pleaded that the sale deed was without consideration and procured by the defendants in connivance with Jota son of Amanat by way of fraud and misrepresentation. Khushia, it was pleaded remained confined to bed. The appellants due to their urgent domestic works asked Jota to look after Khushia for few days and it is during this period with an intention to cheat the plaintiffs that two sale deeds were fraudulently procured i.e. one in favour of Jota and the other in favour of the present defendant-respondents. Khushia, it is stated was not in sound disposing mind at that time. Moreover, there was no need for selling the suit land as Khushia was not in need of money. He had sufficient income to maintain himself. Accordingly, the present suit was filed.

Defendant-respondents contested the suit while pleading that the plaintiffs did not come to Court with clean hands and they had concealed material facts among other pleas. It was pleaded by the defendants that the suit land was sold to them by Khushia vide a registered sale deed dated 12.09.2008. Actual physical possession of the suit land was delivered to them and mutation accordingly entered in the revenue records. It was denied that Khushia was not in sound disposing mind at the time of the execution and registration of the sale deed.

The following issues on the basis of pleadings were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for declaration as prayed for?OPP
2. Whether the plaintiff has concealed material facts, if so, its effect?OPD
3. Whether the suit of the plaintiff is not maintainable? OPD
4. Relief.

Evidence was lead by both the parties.

Learned trial Court decided issue no.1 against the appellant-plaintiffs. Issue no.2 was decided in favour of the defendant-respondents. Issue no.3 was decided in favour of the appellant-plaintiffs. Thus, the suit filed by the appellants was dismissed by the learned trial Court vide judgment and decree dated 10.02.2016.

Appeal filed by the present appellants was also dismissed by the learned Additional District Judge, Ferozepur, vide judgment and decree dated 14.10.2016. Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellants submits that sale deed dated 12.09.2008 was fraudulently executed in favour of the defendants. Khushia, father of the appellants never executed the same. Land in question was being looked after by one Jota son of Amanat, however, taking benefit of the ill health of Khushia, two sale deeds were fraudulently executed i.e. one in favour of the present defendants and another in favour of Jota. Learned counsel submits that the evidence on record has been wrongly ignored/misread by both the learned Courts below. It is thus contended that both the impugned judgments and decrees passed by the learned Courts below be set aside and the present appeal be allowed.

I have heard learned counsel for the appellants and have gone through the file with his able assistance.

There is no dispute that two sale deeds, were executed by Khushia, one in favour of the defendant-respondents and another in favour of Jota son of Amanat. Appellants challenged both the sale deeds by filing two separate suits taking same grounds in both suits. Learned counsel for the appellants fairly states that the civil suit filed by the present appellants against Jota challenging execution of the sale deed by Khushia in his favour was dismissed by the learned trial Court vide judgment Ex.D-2. Appeal impugning the said judgment was dismissed vide judgment Ex.D-4. Said judgments Ex.D-2 and Ex.D-4 have been upheld by this Court as well in RSA No. 4319 of 2015.

It is further not in dispute that there is no evidence on record to show that Khushia was of unsound mind or did not execute the sale deed dated 12.09.2008 in favour of the defendant-respondents. It has been rightly held by the learned trial Court that there is nothing on record to show that the plaintiffs or their agent was cultivating the land since the execution of the sale deed or after death of Khushia on 14.10.2008 till the filing of the suit in March 2013 which indicates that the defendants were in possession of the suit land after execution of the sale deed. Moreover, one of the appellant i.e. appellant no.1 Haneefa is proved to have been present at the time of execution of the sale deed.

It is a matter of record that appellant no.3-Fino appeared as PW-1 and admitted that her father executed the sale deed in favour of the defendants. Khushia was in cultivating possession of the suit land till its

sale. Photograph of appellant-Haneefa is on record as accompanying her father at the time of execution of the sale deed in question. There is a specific recital of the sale consideration to have been received at the residence. No objection was raised at that time by any of the appellants or thereafter till the filing of the present suit in March 2013. There is indeed nothing to show that sale deed dated 12.09.2008 was the result of any fraud or was executed without any consideration by a person of unsound mind. It is established that appellant no.1 was present at the time of execution, thus the appellants have clearly not approached the Court with clean hands. Suit preferred by the appellants has been rightly dismissed.

No other argument has been raised.

Learned counsel for the appellant-plaintiffs is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Impugned judgments dated 10.02.2016 and 14.10.2016 passed by the learned Civil Judge (Sr. Division) Ferozepur and learned Additional District Judge, Ferozepur, respectively, are well reasoned judgments rendered after proper appreciation and consideration of the evidence on record which warrant no interference.

Keeping in view the facts and circumstances as discussed above, present appeal is dismissed with no order as to cost.

11.07.2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No