

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: December 06, 2018

1. RSA No.2387 of 2017 (O&M)

Malkiat Singh & another

...Appellants

Versus

Yadwinder Singh & another

...Respondents

2. RSA No.674 of 2017 (O&M)

Malkiat Singh & others

...Appellants

Versus

Yadwinder Singh & another

...Respondents

3. RSA No.675 of 2017 (O&M)

Baljit Singh

...Appellant

Versus

Yadwinder Singh

...Respondent

4. RSA No.769 of 2017 (O&M)

Sukhjot Singh

...Appellant

Versus

Yadwinder Singh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Puneet Kumar Bansal, Advocate,
for the appellants in all the cases.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of four Regular Second

Appeals bearing No.2387, 674, 675 and 769 of 2017 as the common question of law and fact are involved.

All the aforementioned appeals are at the instance of the plaintiffs in three suits and as a defendant in one suit. Three different suits were filed by the plaintiffs challenging three sale deeds dated 20.11.2007 in respect of land measuring 11 kanals, 21.11.2007 for land measuring 7 kanals 2 marlas and 26.11.2007 qua land measuring 7 kanals 3 marlas alleging it to be an act of fraud having been played by the defendants as the plaintiffs never intended to part with the title and ownership. In one of the suit, it was alleged that plaintiffs had executed a power of attorney dated 01.08.2007 in favour of Yadwinder Singh, who had misused the same, caused breach of trust and fraudulently sold the land to his father Gurmit Singh in respect of land measuring 7 kanals 2 marlas subject matter of sale deed dated 21.11.2007.

Mr. Puneet Kumar Bansal, learned counsel appearing on behalf of the appellants in all the four cases submitted that one of the attesting witnesses in two sale deeds was common but in third one, second witness was different. Attesting witnesses did not depose that the sale deeds were typed in their presence or certified the factum of exchange of sale consideration. In fact, the sale deeds were without any consideration and was an act of fraud and misrepresentation, which had been proved through the testimony of the witnesses, therefore, the ingredients of Order 6 Rule 4 CPC have been proved.

I have heard the learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel on account of the following reasons:-

- a) If at all, not only the fraud had been played but there was misrepresentation or breach of trust by an agent as per authority given by the principal vide registered power of attorney dated 01.08.2007, a prudent person would not sit at home idle but make effort to launch appropriate criminal proceedings, which is conspicuously absent in the present case;
- b) In order to belie the execution of the registered sale deeds, plaintiffs should have summoned the Registrar to establish whether there was a case of impersonation or they were under threat or duress;
- c) Attesting witnesses were not present at the time of drafting of the sale deeds as the attestation was done later on;
- d) No account statement has been produced on record to establish that the alleged sale consideration, subject matter of the sale deeds, was ever deposited in the bank account or not.
- e) Even the scribe of the sale deeds has also not been examined.

All these factors weighed in the mind of the courts below to non-suit the plaintiffs. In my view, the findings arrived at by the courts below cannot be faulted with as the ingredients of provisions of Order 6 Rule 4 CPC dealing with fraud and misrepresentation have not been proved. The injunction, in such circumstances, was a necessary corollary as the vendee had been put into possession. He may be found in possession of more area than the referred to, but the plaintiffs cannot be aggrieved of.

For the reasons stated above, no ground for interference is made out, much less involvement of any substantial question of law.

Resultantly, the appeals are dismissed.

December 06, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No