

RSA No.282 of 2017 (O&M)

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

RSA No.282 of 2017 (O&M)
Date of decision: 08.02.2018

Tarawati Yadav

.....Appellant

versus

Lt. Col. (Retd.) Dr. Mohinder Kumar Yadav and another

.....Respondents

RSA No.919 of 2018 (O&M)

Smt. Tarawati Yadav

.....Appellant

versus

Lt. Col. (Retd.) Dr. Mohinder Kumar Yadav and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Vikas Bahl, Sr. Advocate, with
Ms. Japneet Kaur, Advocate, and
Mr. Nikhil Sabharwal, Advocate, for the appellant.
Mr. Manish Soni, Advocate, for the respondents-caveator
in RSA No.282 of 2017.

RAMENDRA JAIN, J. (ORAL)

This judgment shall dispose of aforesaid two regular second appeals filed by purchaser-defendant No.2 against common judgment and decree dated 29.08.2016 of the First Appellate Court, affirming the judgment and decree dated 23.09.2015 of the trial Court, but with modification thereby decreeing the suit of respondent No.1-plaintiff for declaration and possession by way of specific performance in toto by accepting cross-objections of respondent No.1-plaintiff.

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Put pithily, respondent No.1-plaintiff filed a suit for declaration and possession by way of specific performance of agreement to sell dated 01.09.2010 against appellant-Tarawati and deceased Kasturi Devi pleading that deceased Kasturi Devi had agreed to sell her 1/5th share in the agricultural land measuring 31 kanals 9 marlas situated at Village Jahazgarh, Tehsil Befi, District Jhajjar, in his favour in a total sum of ₹ 8.00 lakh, out of which ₹ 5.00 lakh was paid as earnest money. The date of execution and registration of sale deed was fixed as 01.09.2011, but prior to that date when respondent No.1-plaintiff approached Kasturi Devi for execution of the sale deed in his favour, she did not give any satisfactory reply and disclosed that she was no more owner of the suit property. On enquiry from the revenue officials, he came to know that appellant-defendant No.2 had already got executed a sale deed from Kasturi Devi on 13.12.2010 qua her complete share and mutation No.6047 has also been sanctioned in her favour. The said sale deed in favour of appellant-defendant No.2 was a sham transaction being without consideration and thus, Kasturi Devi was legally bound to perform her part of agreement to sell in his favour as he was always ready and willing to perform his part of the contract.

Upon notice, appellant and deceased Kasturi Devi contested the suit by filing their joint written statement.

The trial Court after holding trial, decreed the suit of respondent No.1-plaintiff with costs holding him entitled to recover ₹.5.00 lakh, which he had paid to deceased Kasturi Devi as earnest money, vide judgment and decree dated 23.09.2015 instead of decreeing the suit for possession by way

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Being aggrieved, appellant-defendant preferred an appeal for setting aside the aforesaid judgment and decree of the trial Court against which respondent No.1-plaintiff filed cross-objections for decretal of his suit in toto.

The First Appellate Court after hearing both the sides, accepted cross-objections of respondent No.1-plaintiff and dismissed the appeal of the appellant vide impugned judgment and decree dated 29.08.2016.

Learned counsel for the appellant contends that alleged scribe of the impugned agreement to sell Ex.P1 was not examined by respondent No.1-plaintiff. It was also not on a stamp paper. Notary, who attested the alleged agreement to sell Ex.P1 was also not examined. Source of the amount of ₹ 5.00 lakh, which respondent No.1-plaintiff claimed to have paid to deceased Kasturi Devi at the time of impugned agreement to sell dated 01.09.2010, was not proved, therefore, impugned agreement to sell was surrounded with suspicious circumstances. Both the Courts below have wrongly and illegally decreed the suit of respondent No.1-plaintiff.

The First Appellate Court ought to have given findings on all the issues. Since it did not touch the entire issues, therefore, the case is liable to be remanded. Both the Courts below have decreed the suit as if the onus was upon the appellant or deceased Kasturi Devi to prove non-execution of the agreement to sell Ex.P1 without appreciating the fact that it was for respondent No.1-plaintiff to prove its due execution, which he could not prove. Therefore, the judgments and decree of both the Courts below are liable to be set aside.

Both the Courts below also failed to appreciate that appellant was

the bona fide purchaser of the suit land. Admission of respondent No.1-

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plaintiff that he alone had gone to the notary for attestation of the impugned agreement to sell is sufficient to prove that same was the result of fraud and impersonation. In support of his arguments, learned counsel placed reliance on the judgments of the Hon'ble Supreme Court in **Bal Krishna and another v. Bhagwan Das (Dead) and others**, 2008(2) R.C.R.(Civil) 732, **N.P. Thirugnanam (Dead) by LRs v. Dr. R. Jagan Mohan Rao**, 1995(2) R.C.R.(Rent) 647, **Nahar Singh v. Harnak Singh and others**, 1996(6) SCC 699, **H. Siddiqui v. A. Ramalingam**, 2011(2) R.C.R.(Civil) 385, **Mohd. Laiquiddin and another v. Kamala Devi Misra (Dead) by LRs and others**, 2010(1) R.C.R.(Civil) 687, **Pankajakshi (Dead) through LRs and others v. Chandrika and others**, 2016(2) R.C.R.(Civil) 245 and judgments of this Court in **Mam Raj and others v. Paramjit Singh**, 2011(57) R.C.R.(Civil) 826, **Mangat Singh v. Rakesh Kumar Gupta and another**, 2014(4) R.C.R.(Civil) 387, **Richhpal Singh v. Sandhura Singh**, 2014(9) R.C.R.(Civil) 70, **Bhagwan Singh (deceased) Rep. By LRs v. Nawab Mohammad Iftikhar Ali Khan and others**, 1982 PLR 668, **Smt. Harjit Grewal and others v. Dr. Vinod Kumar Batra and others**, 2010(5) R.C.R.(Civil) 340 and **Punjab Urban Development Authority and others v. Dashmesh Educational Society (Regd.) and others**, 2005(3) R.C.R.(Civil) 245.

On the other hand, learned counsel for respondent No.1-caveator pleaded the legality and validity of the impugned judgments and decree.

Having given considerable thought to the submissions made by both the sides, this Court is of the considered view that both the appeals are completely devoid of any merit for the reasons to follow.

The appellant has based her claim directly on the basis of sale

deed dated 13.12.2010. Admittedly, prior to the execution and registration

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of the aforesaid sale deed, appellant or deceased Kasturi Devi did not execute any agreement to sell qua the suit land in favour of appellant. In the absence of any such document, the sale deed in favour of the appellant cannot be termed as a genuine document, more particularly, when the appellant also did not prove the source of ₹ 8,70,000/- recited in the sale deed as sale consideration. Since the appellant herself did not prove the source of money, therefore, it does not lie in her mouth that in the absence of disclosure of source of money by respondent No.1-plaintiff, the impugned agreement is surrounded by suspicious circumstances.

It has come on record that deceased Kasturi Devi was residing in the house of appellant-defendant No.2 prior to her death and was being looked after by her. It has also come on record that sale proceeds of shop sold by deceased Kasturi Devi was kept by her with the appellant. Therefore, sale deed dated 13.12.2010 in favour of the appellant by deceased Kasturi Devi cannot be said to be genuine, rather appears to be without any consideration and a bogus document got executed by the appellant to cheat and defraud respondent No.1-plaintiff.

Appellant has categorically admitted in her cross-examination that the sale consideration of ₹ 8.70 lakh allegedly paid by her to deceased Kasturi Devi was kept by her in a box and upon her death on 09.07.2013, the said amount was taken by them. More-so, considering the age of Kasturi Devi at the time of execution of the impugned sale deed dated 13.12.2010 in favour of the appellant, the First Appellate Court has rightly observed that it is difficult to believe that Kasturi Devi who was 80 years of age would keep such a huge amount of ₹ 8.70 lakh with her in a box,

particularly, when she was residing with appellant-defendant No.2 and was

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being looked after by her.

PW2 Balwan Singh one of the attesting witnesses has categorically proved due execution of the agreement to sell Ex.P1. Learned counsel for the appellant has made a futile effort to convince this Court that since this witness did not testify about the transaction in between deceased Kasturi Devi and respondent No.1-plaintiff in his presence, therefore, both the Courts below have given undue weight to the agreement to sell Ex.P1. However, learned counsel for the appellant is reminded of the fact that statement of a witness has to be read as a whole and not in isolation. If we go through the entire statement of PW2 Balwan Singh, the only irresistible conclusion which may be drawn is that impugned agreement to sell Ex.P1 executed by deceased Kasturi Devi in favour of respondent No.1-plaintiff is a genuine document and the amount of ₹ 5.00 lakh mentioned therein was exchanged in between purchaser and seller in his presence.

In law there is no necessity that an agreement to sell should be scribed on a stamp paper inasmuch as it can be oral also. There is no provision in law that any scribe of a document is necessary to be examined for proving its due execution. Respondent No.1-plaintiff and PW2 Balwan Singh have proved due execution of agreement to sell Ex.P1 and the appellant or deceased Kasturi Devi could not rebut the evidence to this effect led by him. Appellant-defendant No.2 and deceased Kasturi Devi in their joint statement completely denied the execution of impugned agreement to sell Ex.P1 in favour of respondent No.1-plaintiff on following grounds: -

(i) it does not bear the thumb impression;

(ii) if her thumb impression appears on the same, the same was

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obtained by respondent No.1-plaintiff by playing fraud upon deceased Kasturi Devi on the pretext that he would get enhanced her old-age pension.

As soon as respondent No.1-plaintiff discharged his burden by leading evidence in affirmative about due and genuine execution of agreement to sell Ex.P1, the onus had shifted on the appellant and deceased Kasturi Devi to rebut the evidence so led by respondent No.1-plaintiff. It was mandatory upon appellant-defendant No.2 and Kasturi Devi to examine some hand-writing expert to prove her stand that the thumb impression on the impugned agreement to sell Ex.P1 was not of Kasturi Devi, rather was of someone else. Appellant-defendant No.2 and Kasturi Devi did not lead any evidence in support of their stand that the thumb impression, if any, of Kasturi Devi was obtained by respondent No.1-plaintiff fraudulently on the pretext of getting enhanced her old-age pension.

By this time it is well-settled that plea of fraud, cheating and impersonation in civil proceedings has to be proved like a criminal charge. As discussion above, appellant-defendant No.2 or deceased Kasturi Devi did not lead any evidence to this effect what to talk of cogent and convincing.

The First Appellate Court has rightly observed that it was not possible for respondent No.1-plaintiff to obtain thumb impression of deceased Kasturi Devi on some blank paper and conversion of the same to an agreement to sell Ex.P1 by visiting the house of appellant-defendant No.2 where Kasturi Devi was living before her death.

From the overall facts and circumstances it can be gathered that

appellant-defendant No.2 is also a close relative of deceased Kasturi Devi.

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Taking advantage of her old-age, as Kasturi Devi was living in the house of appellant-defendant No.2 till her last breath, appellant-defendant No.2 fraudulently got executed impugned sale deed dated 13.12.2010 by exercising undue influence upon her.

Since agreement in favour of respondent No.1-plaintiff is prior in time to the sale deed dated 13.12.2010 in favour of the appellant, therefore, the same has rightly been held genuine and bona fide transaction in between deceased Kasturi Devi and respondent No.1-plaintiff and also hit by the doctrine of *lis pendens*. The First Appellate Court has touched each and every point and has dealt with the entire controversy in between the parties deeply with a great sense of responsibility and has left no point untouched.

All the authorities relied upon by learned counsel for the appellant are either not identical or are distinguishable from the facts of the present case, therefore, no benefit of the same can be given to the appellant.

I have gone through the impugned judgments of both the Courts below and find no ambiguity or illegality in the same.

No question of law muchless substantial has been raised in these regular second appeals by the appellant.

Resultantly, these appeals being devoid of any merit, are hereby dismissed. Moreover, there is unexplainable delay of 426 days in filing RSA No.919 of 2018, therefore, this appeal is dismissed on the ground of limitation as well.

February 08, 2018

R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.