

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

RSA No.2402 of 2018 (O&M)

Date of Decision: October 25, 2018

Raj Rani and others

...Appellant

Versus

Moti Lal and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.D.S.Nigha, Advocate for
the appellant.

HARINDER SINGH SIDHU, J.

The plaintiffs have filed this regular second appeal against the judgment and decree of the courts below whereby their suit has only been partly decreed.

The plaintiffs had filed the suit for declaration to the effect that they are owners in possession of the residential house marked as 'ABCDEF' shown in red and green colour in the annexed site plan and that the sale-deed dated 14.3.1969 alleged to be executed by Piare Lal in favour of Balak Ram father of defendants No.1 and 2 is forged, fabricated, without consideration. Declaration was also sought that the sale-deed dated 3.7.2007 executed by defendant No.1 in favour of defendant No.3 is also illegal and null and void. They also prayed for consequential relief of :

(i) permanent injunction for restraining the defendants from forcibly dispossessing the plaintiffs from the portion marked as 'ABCF' in the site plan without due course of law

(ii) possession of portion of residential house marked as 'CDEF' shown in

red colour in the site plan.

The case of the plaintiffs was that late Piare Lal, husband of plaintiff No.1 and father of plaintiffs No.2 to 4 was exclusive owner in possession of residential house as detailed in the head note of the plaint. He had purchased it vide sale-deed dated 27.1.1956. After his death, the plaintiffs being his legal heirs had inherited the said house. In 2004 defendant No.1 threatened to dispossess them from the suit property. They filed civil suit for permanent injunction against defendant No.1. In the written statement he disclosed that he was in possession of the house in terms of sale-deed dated 14.3.1969 qua $\frac{1}{2}$ share of the house. The plaintiffs immediately applied for the certified copy of the sale-deed dated 14.3.1969. On perusal thereof the plaintiffs came to know that Balak Ram, father of defendants No.1 and 2 had got executed that sale-deed by producing someone else in place of Piare Lal. The sale-deed bore the thumb impression of the vendor. Piare Lal was 8th standard pass. He used to sign in Hindi. There was no occasion for Piare Lal to thumb mark the sale-deed. Accordingly, the sale-deed dated 14.3.1969 is forged, fabricated, illegal, without consideration and liable to be set aside.

The plaintiffs had filed a civil suit titled 'Raj Rani etc. vs. Ram Piari and others' on 15.1.2004 challenging the sale-deed dated 14.3.1969. However vide order dated 20.4.2006 it was withdrawn with permission to file a fresh suit on the same cause of action. The plaintiffs did not file a fresh suit as defendant No.1 undertook to vacate the portion after few months. Rather than doing so defendant No.1 in a fraudulent manner executed a sale-deed dated 3.7.2007 in respect of his share in the suit property in favour of defendant No.3, which again is illegal and null and

void.

The case of defendant No.1 was that Piare Lal had validly executed the sale-deed dated 14.3.1969 in favour of Balak Ram and put him in the possession of the premises sold. After the demise of Balak Ram his estate was inherited by his sons - defendants No.1 and 2. Defendant No.2 gifted his share to defendant No.1 vide registered gift deed dated 7.9.2006. The entire premises purchased by Balak Ram has been sold by defendant No.1 to defendant No.3 vide registered sale-deed dated 3.7.2007. Thereafter, defendant No.3 is in possession of the said premises as owner.

Defendant No.3 stated that he is in exclusive possession of the property by virtue of valid sale-deed executed by defendant No.1 in his favour.

On behalf of the plaintiffs, Sucheta – plaintiff No.4 appeared as PW1 and reiterated the contents of the plaint. She proved the site plan Ex.P1, sale-deed dated 27.1.1956 as Ex.P2, its translation from Urdu to Punjabi Ex.P3, death certificate of Piare Lal Ex.P4, sale-deed dated 14.3.1969 as Ex.P5, etc. Jyoti Savroop appeared as PW2. Sanjeev Kumar, Clerk MC Office Pathankot appeared as PW3. Mohinder Pal, Election Clerk appeared as PW4 and proved certified copy of voters list as Ex P-11. Ravinder Kumar Clerk MC office Pathankot appeared as PW5 and proved certified copy of water connection as Ex P-12. Ravinder Singh draftsman appeared as PW6 and proved on record the site-plan as Ex.P13. Rajinder Singh, HRC Office Gurdaspur PW7 proved sale-deeds dated 27.1.1956 and 14.3.1969.

For the defendants Shashi Pal appeared as DW1 and proved sale-

deed dated 3.7.2007 as Ex.D1, his signatures as Ex.D2, gift-deed dated

7.9.2006 as Ex.D3. Joginder Pal defendant No.3 appeared as DW2 and deposed as per his defence in the written statement. Kulbhushan Rai DW3 proved gift deed dated 7.9.2006 Ex.D3 and endorsement as Ex.D4.

The Ld. Trial Court noted that PW1 Sucheta in her cross-examination deposed that her father Piare Lal expired in the year 1998. She admitted that there is intervening wall between the portion of the house in possession of the plaintiffs and the portion in possession of defendant No.3. She also stated that her father had informed her and her mother during his life time that Moti Lal (defendant No.1) had got registered a fake sale-deed in his favour and illegally occupied his house. This information was given to her by her father in 1988 at the time of her marriage. However, her father had not filed any suit against Moti Lal. She also admitted that separate electricity connection and water sewerage connection had been installed by the vendees.

DW-1 Shish Pal had deposed that sale-deed dated 3.7.2007 was got scribed by Moti Lal – defendant No.1 in favour of Joginder Pal – defendant No.3 from Gurbax Singh deed-writer, who read over the contents of the sale-deed to the parties and they signed the same in token of its correctness in his presence and in the presence of witnesses. He and Amarjit appended their signatures as attesting witnesses and thereafter the sale-deed was produced before the sub-Registrar for registration by Moti Lal. The contents of the sale-deed were read over to Moti Lal who admitted it to be correct and put his signatures on the endorsement of the sub-Registrar with computer imaging over it.

The learned Trial Court noticed that it is not the case of the

plaintiffs that late Piare Lal during his life time challenged the sale-deed. If

Balak Ram had got the sale-deed executed by impersonating late Piare Lal or playing a fraud upon him, then Piare Lal might have challenged the sale-deed during his life time. That not having been done it was not open to the plaintiffs to challenge the sale-deed after the death of Piare Lal. Moreover, though they alleged the sale-deed to be the result of fraud, but they had not specifically pleaded as to how and in what manner it was a result of fraud. The plaintiffs had not led any evidence to show that the sale-deed dated 14.3.1969 had not actually been executed by Piare Lal. They also led no evidence that either no consideration or inadequate consideration was paid to the vendor. A presumption of validity arises in case of a registered document and the onus to rebut the presumption is on the person alleging otherwise but the plaintiffs had led no evidence to rebut the presumption.

The learned Trial Court further concluded that from the evidence it was clear that Piare Lal predecessor-in-interest of the plaintiffs had sold the property marked 'CDEF' to Balak Ram vide sale-deed dated 14.3.1969 which was further sold by defendant No.1 to defendant No.3 vide sale-deed dated 3.7.2007. As sale-deed dated 14.3.1969 was legal and valid consequently sale-deed dated 3.7.2007 by defendant No.1 in favour of defendant No.3 was also legal and valid. Thus, the plaintiffs have no right, title or interest in the property subject of the said sale-deeds and possession of defendant No.3 over the said property is legal and valid.

Learned Trial Court further noticed that the claim of the defendants was that portion 'CDEF' shown in red colour in the site plan has been sold by Piare Lal to Balak Ram vide sale-deed dated 14.3.1969 which was further sold by defendant No.1 to defendant No.3 vide sale-deed dated

