

DIWAKER GULATI
2018.10.01 12:42

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

RSA No.3596 of 2017(O&M)

Date of decision:6.9.2018

Manjit Kaur and others

.....Appellants

VERSUS

Kanta Rani

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. P.K.S. Phoolka, Advocate for the appellants.

REKHA MITTAL, J.

The present appeal directs challenge against concurrent findings of fact recorded by the Courts whereby declaration sought by the appellants/plaintiffs by assailing registered sale deed No.6177 dated 20.11.2002 executed by Kewal Singh (since deceased), predecessor in interest of the appellants, in favour of respondent/defendant regarding land measuring 6.5 biswas situated in village Patti Jhutti, Tehsil and District Bathinda and mutation No.44177 dated 30.11.2002 sanctioned on the basis of said sale deed in respect of land detailed in head-note of the plaint was dismissed by the trial Court vide judgment and decree dated 29.05.2015 that came to be affirmed in appeal by the Additional District Judge, Bathinda.

Briefly stated, the appellants/plaintiffs challenged the sale deed executed by deceased Kewal Singh primarily on the ground that the same was got executed by playing fraud, cheating and misrepresentation as Kewal was habitual of taking intoxicant. The sale deed is without

consideration as the defendant never paid any money to Kewal Singh at the time of execution and registration of the sale deed. The respondent/defendant never came in possession of the suit land on the basis of sale deed till today, sufficient to prove that the sale deed is illegal and result of fraud and misrepresentation, thus, liable to be set aside/cancelled.

The respondent/defendant filed the written statement and in turn raised certain preliminary objections *inter alia* locus standi, suit being not maintainable, suit being without any cause of action and concealment of facts etc. It is averred that the suit property was purchased by answering defendant from Kewal Singh for a valuable consideration and since then she is owner in possession of suit property. Kewal Singh sold the suit land for Rs.68,000/- through sale deed registered in the office of Sub Registrar, Bathinda in presence of attesting witnesses and put the defendant in possession of suit land. Defendant has constructed boundary wall around the said land in the year 2002.

The trial Court framed issues and permitted the parties to adduce evidence in support of their respective contentions.

Having heard counsel for the parties in the light of materials on record, the trial Court rejected plea of the appellants that the sale deed is the result of fraud, cheating, misrepresentation or without consideration.

Counsel for the appellants would urge that as suit land in the hands of Sh. Kewal Singh was Joint Hindu Family Coparcenary Property, Gurjinder Singh @ Gagandeep Singh son of Kewal Singh acquired right in suit land by way of birth, therefore, Kewal Singh was not competent to alienate the suit land without legal necessity or for benefit of estate. It is further argued that a plea to this effect was raised before the Court in

appeal, taken note of in para 8 of the judgment but the same has been wrongly rejected by the Appellate Court. It is further argued that findings of the Courts rejecting plea of the appellants with regard to sale deed being the result of fraud, misrepresentation and without consideration are consequence of failure of the Courts to appreciate the materials on record in right perspective, therefore cannot be allowed to sustain.

I have heard counsel for the appellants, perused the paper-book particularly the judgments impugned.

So far as contention with regard to suit land being Joint Hindu Family Coparcenary Property in the hands of Sh. Kewal Singh is concerned, indisputably, no such plea was raised by the appellants in the plaint. As per the settled position in law, no factual controversy can be allowed to be raised for the first time before the Appellate Court. This apart, counsel for the appellants has failed to point out any materials on record to substantiate plea of the appellants that suit land was Joint Hindu Family Coparcenary Property in the hands of Kewal Singh. That being so, no error much less perversity can be noticed in findings of the Appellate Court rejecting plea of the appellants that suit land was Joint Hindu Family Coparcenary Property in the hands of Kewal Singh and his son Gurjinder Singh acquired right by way of birth in the said land.

The plea of the appellants is that the respondent/defendant got executed the sale deed from Kewal Singh who was in the habit of taking intoxicant and the sale deed is the result of fraud and misrepresentation etc. Counsel for the appellants is not in a position to apprise the Court as to when did Kewal Singh pass away. However, suit by the appellants was instituted in the year 2010 to challenge the sale deed executed as back as in

November 2002. The very fact that Kewal Singh never challenged the sale deed during his lifetime on any of the grounds is sufficient to falsify and belie plea of the appellants that sale deed is the result of fraud, misrepresentation etc. Even otherwise, the sale deed is a registered document to which presumption of correctness is appended qua endorsement made by the Registering Authority in discharge of its official duty. The plea that a transaction is vitiated by fraud is required to be proved akin to a criminal charge.

Counsel for the appellants has failed to point out any materials on record to substantiate plea of the appellants that the sale deed is the result of fraud, cheating etc or the same is without consideration. To rebut evidence adduced by the appellants, the respondent/defendant examined Vikas Puri, Advocate, to prove handwriting of his father who had scribed the sale deed being a licensed document writer. Anil Kumar, Handwriting and Fingerprints Expert was examined to prove signatures of Kewal Singh on the sale deed when otherwise the appellants have not specifically denied the sale deed to be signed by Kewal Singh as they sought to assail the same on the ground that the same was got executed by taking advantage of bad habit of Kewal Singh.

Chhinder Kaur is an attesting witness to the sale deed and her testimony may not be taken on its face value as she admitted that number of cases have been registered against her for attesting certain documents. However, there is nothing on record suggestive of the fact that there was fiduciary relationship between Kewal Singh and respondent- Kanta Rani in order to say that it was obligation of the respondent to prove that the transaction is fair and not the result of undue influence etc. This apart, sale

deed does not require attestation. No sooner the appellants failed to discharge their onus that sale deed was got executed by respondent taking undue benefit of alleged habit of Kewal Singh or the same is without consideration, the appellants cannot derive any advantage to their contention from weakness of defence, if any. In this view of the matter, I find it difficult to accept contention of the appellants that findings recorded by the Courts suffer from an error much less perversity, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

SEPTEMBER 6, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no