

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

RSA No.33 of 2018 (O&M)

Date of decision:24.05.2018

Smt. Sewa

... Appellant

Vs.

Jagdish and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.A.Sheoran, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff is in Regular Second Appeal against the judgment and decree dated 24.08.2017 rendered by the Additional District Judge, Hisar, whereby, an appeal preferred against the judgment and decree dated 26.11.2013 passed by the trial Court which had decreed the suit, had been allowed, in essence, the suit of the plaintiff, has been dismissed.

The appellant-plaintiff instituted the suit for declaration claiming herself to be owner in possession of the suit property as described in the plaint by laying challenge to the release deed bearing 3465 dated 23.08.2012 on the premise that a fraud was played upon her, for, she had gone to the office of Sub-Registrar for the purpose of execution of the sale deed dated 23.08.2012 bearing Vasika no.3466 but the defendant being brother had played fraud upon the plaintiff and got her thumb impressions on the release deed. She was made to understand that her thumb impressions

were being appended on the General Power of Attorney instead of release deed. On acquiring the knowledge, immediately the suit was filed on 12.09.2012.

The suit was contested by the defendants qua maintainability, cause of action, suppression of material facts, estoppel etc. It was averred that the plaintiff had the knowledge of the execution of the release deed and had appended her signatures on her own volition, much less appeared before the Sub-Registrar.

The trial Court on the basis of the aforementioned pleadings framed five issues. The appellant-plaintiff Sewa in support of the averments made in the plaint examined herself and her husband Dharampal as PW1 and PW2 respectively and brought on record Ex.P1 to Ex.P8. On the other hand, defendants examined three witnesses.

The trial Court on the basis of documentary evidence brought on record decreed the suit. The defendants assailed the aforementioned judgment and decree before the Lower Appellate Court. The Lower Appellate Court being the last Court of facts and law after re-appreciating the evidence reversed the findings. It is in this circumstances, the present appeal has been filed.

Mr. R.A.Sheoran, learned counsel appearing on behalf of the appellant-plaintiff submitted that a fraud had been played upon the plaintiff and for proving the same, plaintiff had examined PW1 herself and her husband as PW2, thus, ingredients as envisaged under Order 6 Rule 4 of CPC had been complied with. The Court below had not adverted to the

statement of DW1, who stated that Rs. 2 lacs were given to Sewa Devi but pleading in the written statement are totally wanting. The Lower Appellate Court has failed to appreciate that plaintiff had diligently availed the remedy by filing the suit within a period of 20 days. There are contradictions in the statements of DW1 and DW2, for, DW1 stated that release deed was written at 11.00 a.m and sale deed was executed at 2.00 p.m, whereas, DW2 stated that the release deed and sale deed were executed at the same time. The factum of illiteracy of the plaintiff was also not denied, thus, there is gross illegality and perversity as the Lower Appellate Court has not appreciated the aforementioned aspects.

I have heard the learned counsel for the appellant-plaintiff appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Sheoran, for, plaintiff has miserably failed to prove the ingredients of Order 6 Rule 4 CPC. It is not necessary to plead the fact but prove the same. No independent person has been examined as witness in support of the averments made in the plaint except her self serving statement as PW1 and Dharampal her husband as PW2. It was obligatory upon the plaintiff to summon the concerned registration clerk and Registrar where release deed was registered to belie the stand of the defendants. Having failed to do so, I am of the view that it was clear cut case where the plaintiff volte-faced her act of volition presumably on the basis of greed.

In my view, findings of facts and law arrived by the Lower Appellate Court are perfectly legal and justified as the plaintiff has

miserably failed to prove the ingredients of fraud. PW3-Satbir Singh had rather admitted that he was present with the deed writer. All these factors have been examined in *extenso*.

Thus, the arguments of Mr. R.A.Sheoran, have not been able to bring the case within the realm of illegality and perversity enabling this Court to form a different opinion than the one arrived at by the Lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 24, 2018

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No