

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

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RSA 5065 of 2017 (O&M)
Date of decision: 23.05.2018

Sahab Singh and others

..... Appellants

Versus

Sardool Singh (dead) through LR's and Ors.

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Govind Chauhan, Advocate
for the appellants

Mr. Amit Jain, Advocate
for the respondents

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Rekha Mittal, J.

The present appeal directs challenge against judgment and decree dated 03.10.2017 passed by the Additional District Judge, Karnal (hereinafter to be referred as 'the appellate Court') whereby the judgment and decree dated 24.12.2013 passed by the Additional Civil Judge (Senior Division) Assandh, District Karnal (hereinafter to be referred as 'the trial Court') have been set aside and suit filed by the respondents/plaintiffs seeking declaration to the effect that they are owners in joint possession of agricultural land measuring 52K-4M by setting aside sale deed dated 01.02.2002 and mutation No. 10782 dated 23.12.2003 being illegal and result of fraud, has been decreed.

The respondents/plaintiffs are the real brothers of Mann Singh

son of Labh Singh (since deceased). The defendants/appellants are the sons and grandsons of Kundan Singh, another brother of Mann Singh. The property in question i.e. land measuring 52K-4M was owned by Mann Singh. The appellants/defendants have been asserting their right to suit land on the basis of Vasika No.1582/1 dated 01.02.2002 on the basis whereof, mutation No.10782 dated 23.12.2003 was sanctioned in their favour. The respondents/plaintiffs challenged the sale deed aforesaid on the ground that it was the result of fraud and not voluntary act of Mann Singh. Mann Singh was an old man and he was not in a position to move out. The sale deed is the result of undue influence played upon Mann Singh by the appellants/defendants who were in a dominant position. Not even a single penny was paid to Mann Singh towards sale consideration before Sub Registrar or other witnesses. The appellants had fraudulently shown sale consideration of Rs.17,96,000.00 in the impugned sale deed but it was not known as to where money was deposited or where it was spent by Mann Singh as there is nothing on record that Mann Singh had purchased any property out of money allegedly received by him.

The appellants/defendants supported sale deed dated 01.02.2002 with the averments that the same was executed by Shri Mann Singh and the respondents have no right to challenge the sale after death of Mann Singh. The answering defendants/appellants earlier filed a suit for permanent injunction bearing No. 1/2005 titled *Amir Singh etc. vs Shisha Singh etc.* which was decided on 04.04.2005. In the said suit, Sisha Singh, respondent/plaintiff No. 2 had appeared, filed the written statement and admitted execution of sale deed by Mann Singh. He has also admitted

purchase of land by the appellants from Sahab Singh in the year 2003.

The controversy between the parties led to framing of following issues on 05.08.2011/24.12.2013:-

1. *Whether the sale deeds No. 1586 and 1582 dated 01.02.2002 and Mutation No. 10782 dated 23.12.2003 are illegal, null and void and not binding upon the rights of plaintiffs?OPP*
- 1-A *Whether the plaintiffs are owners in joint possession of the suit land per para No. 4 of the plaint being legal heirs of Mann Singh?OPP*
- 1-B *Whether plaintiffs are entitled to decree of permanent injunction for restraining defendants from interfering in their possession over the suit land and alienating the same on the grounds mentioned in the plaint?OPP*
2. *Whether the suit of the plaintiffs is not maintainable in the present form?OPD*
3. *Whether plaintiffs have no cause of action and locus standi to file the present suit?OPD*
4. *Whether the suit of the plaintiffs is barred by limitation? OPD*
5. *Whether plaintiffs are estopped from filing the suit by their own act and conduct?OPD*
6. *Relief.*

The parties were permitted to adduce evidence in support of their respective claims.

The respondents/plaintiffs examined Manish Kumar, DRK Judicial Record Room, Karnal PW1, Satyawan, RC to Sub Registrar, Assandh PW2, Sisha Singh (Plaintiff No. 2) appeared as PW3 and Sanjay Singh, Ahlmad PW4.

To rebut evidence of the respondents/plaintiffs, the appellants examined Rameshwar, Bill Distributor office of SDO UHBVNL, Assandh DW1, Manish Kumar, DRK Judicial Record Room, Karnal DW2, O.P. Chaudhary, Advocate DW3, Sahab Singh, one of the defendants DW4, Hari Singh, Numbardar, one of the attesting witnesses of the impugned sale deed, Ex. D2 DW5, Jai Pal Sharma, Document Writer, Sub Tehsil Ballah DW6.

Having heard counsel for the parties in the light of materials on record, learned trial Court dismissed the suit filed by the respondents/plaintiffs.

A relevant extract from paras 16 and 17 of the judgment passed by the trial Court is quoted thus, for ready reference:-

“16. The evidence led by plaintiffs is not forceful enough to discard the registered sale deed Ex.P3/Ex.D2 which is presumed to have been validly executed. It was for the plaintiffs to rebut such presumption by leading cogent evidence and the entire onus was on the plaintiffs to prove that the sale deed was not executed in the manner as stated in the instrument. I find force in the contentions raised by learned counsel for

*defendants that in the given factual matrix of the case, recitals in registered sale deed showing payment of consideration could not be doubted unless it was proved to be incorrect and the sale deed containing certificate of Sub Registrar showing the vendor to have admitted the receipt of sale consideration was in itself sufficient evidence to show that sale was for consideration and the consideration indeed had passed. In support of his contentions, the learned counsel for defendants had also relied upon **Prem Singh and ors vs. Birbal and others, reported as 2006(3) LJR 226 (SC), Abdul Rahim and Ors. Vs Sk.Abdul Zabbar and others, reported as 2009 (3) CCC 037 (SC), Ranganayakamma & anr vs. K S Prakash (D) by LRs and Ors. reported as 2009(1) LJR 640(SC), Ravinder Pal Vs Satish Kumar and another reported as 2009(4) CCC 356 (P&H), Mehar Singh (died) through LRs vs Baltej Singh and another reported as 2006 (1) CCC 25 (P&H), Raj Kumar and others vs. Hardwari and others reported as 2007(2) CCC 364 (P&H) and Smt. Rani and another vs. Smt. Santa Bala Debnath and others reported as AIR 1971 (SC) 1028.***

17. The record of the case rather shows that Mann Singh was a person not (sic) possessing

*sufficient intelligence to understand the nature of the transaction undertaken by him. In the absence of any clear evidence regarding fraud in execution of impugned sale deed, the plea of fraud could not be accepted. Moreover, like any other charge whether made in civil or criminal proceedings, plea of fraud must be established beyond reasonable doubt. The burden of proof was on the plaintiffs who had raised the ground of fraud and misrepresentation and defendants could not be asked to discharge negative burden. However, suspicious might be the circumstances, however, strange was the coincidence and however grave the doubt were, suspicion alone could never take the place of proof and learned counsel for defendants argued on this point by deriving support from **Union of India vs M/s Chaturbhai M Patel and others reported as 1976 CLJ 166 (SC), Dayaram vs Smt. Lakshmnia and others reported as 2008(4) CCC 227 (Allababad) and Hajrabai and others vs Jadavbaia reported as AIR 1986 (M.P) 106.** The contentions could not be refuted by the plaintiffs who utterly failed to stand on their own legs to substantiate their version.”*

As has been noticed hereinbefore, the appeal preferred by the respondents/plaintiffs was allowed by the Additional District Judge,

Karnal for reasons recorded in paras 13 to 20, *inter alia*, on the following grounds:-

- i) The stamp papers for execution of the sale deed were purchased by Sahab Singh by playing fraud upon Mann Singh who was an old and sick person aged 90/95 years;
- ii) In the sale deed, there is overwriting vide which registration No. 1586 has been changed to 1582;
- iii) The appellants/defendants have not been able to prove payment of Rs.17,96,000.00 toward sale consideration to Shri Mann Singh;
- iv) As per the sale deed, after purchase of land, possession was handed over to Sahab Singh etc. but perusal of khasra girdawari for the year 2005-2006 shows that Mann Singh was in cultivating possession over the suit land upto 2005-06 or till the date of his death which proves that Mann Singh never sold the land to Sahab Singh by way of alleged sale deed;
- v) Perusal of affidavit Ex D3, allegedly executed by Mann Singh shows that his thumb impressions were obtained at the instance of Sahab Singh etc. by playing fraud and two lines were inserted later on after execution of the alleged affidavit;
- vi) Sahab Singh, appellant stated that Mann Singh was

80 years old but Hari Singh, Numbardar (DW5) had stated that Mann Singh was aged about 90/95 years old that proves version of the respondents/plaintiffs regarding old age of Mann Singh as correct and a wrong age has been mentioned by Sahab Singh;

- vii) Hari Singh, Numbardar (DW5) had deposed that before he reached the office of Tehsildar, Mann Singh and Sahab Singh had already appeared before the Tehsildar. Meaning thereby, no inquiry was made by Sub Registrar in his presence from Mann Singh. Even Mann Singh did not go to Sub Registrar in his presence and all the reports were already made which falsifies contention of the appellants/ defendants that contents of sale deed were read over and explained to Mann Singh before obtaining his thumb impressions by Sub Registrar before the attesting witnesses;
- viii) Hari Singh, Numbardar (DW 5) also stated that in the Computer Room, no thumb impressions were obtained by any one or the concerned Clerk in his presence;
- ix) No relative in whose presence the amount was paid to Mann Singh has been examined by the appellants/defendants.

Counsel for the appellants would urge that the trial Court in

paras 16 and 17 of the judgment has recorded findings to negate plea of the respondents/plaintiffs that registered sale deed dated 01.02.2002 marked Ex P3/D2 is liable to be set aside on any count whatever. It is argued with vehemence that the Court in appeal has not adverted to the reasoning adopted by the trial Court while setting aside the judgment and decree passed by the trial court, therefore, the judgment and decree passed by the Court in appeal cannot be allowed to sustain. It is further argued that Sahab Singh, indisputably, in the earlier suit for injunction filed in January 2005 has admitted sale of land 52K-4M by Mann Singh in favour of the appellants/defendants by way of written statement filed in that suit marked as exhibit. Mann Singh was also impleaded as a party in the suit for injunction filed in January 2005 and he was duly served in the case as has been proved on record but Mann Singh did not contest plea of the appellants that he had sold land measuring 52K 4M in regard whereof mutation No. 10782 dated 23.12.2003 was sanctioned and a copy whereof was placed on record of the previous suit along with the plaint. It is further argued that had it been true that the sale deed in question was not executed by Mann Singh, where was the occasion for the appellants to make the document in question public, specially to the knowledge of Mann Singh and the respondents, firstly by getting the mutation sanctioned in December 2003 and thereafter to file a suit for injunction in January 2005 incorporating factum of sale of land in question by Mann Singh in their favour in which the respondents/plaintiffs as well as Mann Singh and sons of plaintiff Sisha Singh were impleaded on the array of defendants. According to counsel, statement of Hari Singh, Numbardar (DW5) is a

clinching evidence to establish that Mann Singh was present in the office of Sub Registrar on 01.02.2002, the date on which the sale deed was executed and got registered, sufficient to falsify and belie plea of the respondents/plaintiffs that Mann Singh was bed ridden or was not in a position to attend the office of Sub Registrar. In addition, it is argued that the respondents/plaintiffs who had knocked at the door to challenge the registered document have failed to lead even an iota of evidence that Mann Singh was either physically or mentally infirm to execute sale deed in February 2002 when otherwise said Mann Singh remained alive for a period of more than four years subsequent to execution of sale deed. Further argued that as Mann Singh definitely learnt about the sale deed set up by the appellants/defendants in view of notice of civil suit filed in January 2005 and did not contest the suit nor challenged the sale deed in question during his life time, it speaks volumes against plea of the respondents/plaintiffs that the sale deed in question is the result of fraud, undue influence or without consideration.

Another submission made by counsel is that testimony of Sisha Singh, one of the plaintiffs examined in the case is full of discrepancies and contradictions and is not worthy of credence to establish plea of the respondents/plaintiffs that the sale deed in question is liable to be set aside on any of the grounds raised in the plaint. In the end, it is submitted that the Court in appeal was swayed by irrelevant and immaterial considerations to set aside the judgment and decree passed by the trial Court without appreciating that the respondents/plaintiffs failed to lead any evidence to establish their claim when otherwise in view of

settled position in law, the plaintiff has to stand on his own legs and cannot derive advantage from weakness of the defence.

Counsel representing the respondents/plaintiffs has supported the judgment passed by the Appellate Court. He has fairly conceded that some of the reasons assigned by the Court in appeal for setting aside the sale deed may not be very significant for deciding the present controversy. However, it has been strongly argued that testimonies of Hari Singh, Numbardar (DW5), one of the attesting witnesses to impugned sale deed and Jai Pal Sharma, Deed Writer (DW6) are not good enough to prove that the sale deed in question was executed and got registered by Mann Singh after understanding and accepting its contents to be correct. For the purpose, counsel has made reference to the observations recorded by the Appellate Court in paras 17 to 19 of the judgment.

Further argued that as per statement of Sahab Singh (DW4), the entire sale consideration of more than Rs.17,00,000.00 was paid to Shri Mann Singh on the date, the sale deed was executed and got registered. It is argued that if the appellants had to pay the sale consideration on the date of execution and registration of sale deed, in normal circumstances, they would have paid the same in the presence of Sub Registrar. The appellants have failed to lead convincing evidence to establish that sale consideration of more than Rs.17,00,000.00 was actually paid to Mann Singh and the said fact alone is sufficient to prove that the sale deed is the result of fraud, undue influence or impersonation. It has been argued that Mann Singh died on 29.08.2006 leaving behind his widow Bal Kaur. Bal Kaur passed away on 29.09.2006. Land of Mann Singh was inherited by Bal Kaur vide

Mutation No. 12622 dated 21.09.2006. The appellants got registered sale deed No.1670/1 dated 21.09.2006 purported to be executed by Bal Kaur in favour of Smt. Raj Kaur and Kuldeep Kaur wives of two of the appellants. The said sale deed became subject matter of challenge at the behest of the respondents/plaintiffs by way of a separate suit. The sale deed dated 21.09.2006 was set aside by the trial Court and the judgment and decree passed by the trial Court have been maintained up to Hon'ble the Supreme Court as Regular Second Appeal No.1719 of 2017 filed by Raj Kaur and another against findings recorded by the Courts came to be dismissed in limine by this Court vide judgment dated 12.07.2017 and Special Leave to Appeal (C) No. 33680 of 2017 was dismissed by Hon'ble the Supreme Court on 15.01.2018.

I have heard counsel for the parties, perused the paper book and the records.

Indisputably, sale deed in question was executed on 01.02.2002 and Mann Singh died in August 2006. Mutation qua sale deed was sanctioned in December 2003. During life time of Mann Singh, the appellants filed civil suit No.1 of 2005 on 03.01.2005 claiming relief of permanent injunction. In the said suit, the respondents/plaintiffs, Mann Singh and four sons of Sisha Singh were impleaded as defendants No. 1 to 7. Perusal of the plaint of said suit Ex. D9 would reveal that in the first para of plaint in sub para (b), there is detailed reference to purchase of land from Mann Singh. A relevant extract therefrom reads as follows:-

(b) that further plaintiffs No. 1 to 3 have purchased the 817/3698 share of defendant Mann Singh out of his 1/4th

share 3698 in the land as detailed in para (a). Copy of mutation No.10782 dated 23.12.2003 is attached here with as Annexure P2, according to which, plaintiffs No. 1 to 3 have purchased 817/3698 share of defendant Mann Singh equally also his share in Khewat No. 7518, khasra No. 1132 (12-13).”

In sub para (c), there is reference to purchase of land measuring 7K 16M by plaintiffs No. 2 and 3 therein namely Sahab Singh and Rana Singh from defendant Sardul Singh vide sale deed No. 1630/1 dated 12.12.2003.

Sisha Singh along with his sons arrayed as defendants No. 1 and 4 to 7 filed the written statement Ex D10. In para 3 of the preliminary objections of the written statement, it has been averred that it is clearly mentioned in the plaint itself that the plaintiffs had purchased the land falling to the share of defendants Mann Singh as well as Sardul Singh in the year 2003. The mutation of said land has already been sanctioned in favour of the plaintiffs. When the plaintiffs can purchase the land of co-sharer in entire suit land, how can they stop any other co-sharer to sell his land. Again in para 1 of the written statement on merits, stand of the answering defendants therein is that para 1 of the plaint is not disputed so far as ownership of the plaintiffs upto their share is concerned. It is a matter of record. However, it is not mentioned in this para that the plaintiffs are in possession of which khasra Number. Counsel for the respondents has not disputed that in the said suit, Mann Singh was served personally and the report has been proved as Ex D11. The learned trial

Court had considered these documents in right perspective to say that as Sisha Singh has already admitted the factum of sale by Mann Singh and sanction of mutation on the basis thereof, he cannot be allowed to take a somersault and raise a plea that the sale deed in question is the result of fraud, undue influence or impersonation.

The Court in appeal has not at all adverted to the documentary evidence in this regard while recording reasons in the paras discussed herein before and setting aside the judgment and decree passed by the trial Court. As has been rightly argued by counsel for the appellants that had the appellants created the sale deed either by way of fraud or impersonation or without payment of sale consideration, there was no reason for them to make the said sale public by getting the mutation sanctioned in December 2003 and then filing a suit for permanent injunction in January 2005 against Mann Singh and respondents herein, as a party specifically pleading factum of sale and producing on record copy of mutation. In this view of the matter, I find merit in contention of the appellants that earlier civil litigation creates wide chinks in the story propounded by the respondents that the sale deed is the result of fraud, undue influence or impersonation.

There cannot be any dispute about settled position in law that a party who knocks at the door of the Court has to establish his case and stand on his own legs and cannot derive any advantage from weakness of the defence. In the case at hand, the respondents/plaintiffs failed to lead even an iota of evidence that Shri Mann Singh was physically or mentally infirm much less that he was not able to walk to go to the Deed Writer or

office of the Sub Registrar for getting the sale deed registered. As has been rightly held by the trial Court, plea of fraud even in civil proceedings is required to be proved beyond shadow of reasonable doubt. In the instant case, the respondents/plaintiffs have failed to prove their case even on the touchstone of balance of probabilities. The appellate Court altogether ignored the settled position in law, rather ventured to dig out reasons to support cause of the respondents/plaintiffs for undisclosed reasons.

Counsel for the respondents has not advanced any arguments to say that testimony of Hari Singh, Numbardar (DW5) does not prove presence of Shri Mann Singh in the office of Sub Registrar on 01.02.2002. The respondents, in view of certain questions put to Deed Writer, have even admitted presence of Mann Singh at the time of execution of sale deed. A relevant extract from cross examination of Jai Pal Sharma, Deed Writer (DW6) in Hindi but translated in English, reads as follows:-

“A rough registry of the sale deed was prepared. I do not know whether or not there were names of some other persons in rough registry other than those mentioned in original registry. It is incorrect that names of Man Singh's brothers Sisha Singh and Sardool Singh were mentioned in rough registry. I do not remember if Mann Singh had acknowledged receipt of payment in presence of any other person except me. Voluntarily stated that there may be witness. It is wrong to suggest that rough registry which was prepared by me was got prepared by Mann Singh according to his wish and there were names of his brothers in the said registry but later I in connivance with Sahab Singh and witnesses, prepared a wrong registry. It is wrong to suggest that

Mann Singh did not acknowledge the receipt of payment before me.”

The aforesaid extract amounts to admission of the respondents that Mann Singh was present with the Deed Writer at the time of execution of sale deed.

The Court in appeal did not bother to appreciate facts elicited in cross examination of the witnesses particularly that of Jai Pal Sharma, Deed Writer (DW6), Sahab Singh (DW4) and Sisha Singh (PW3) while recording its contrary opinion, to set aside the judgment and decree passed by the trial Court. The first appellate Court is the final Court of facts but in the instant case, the appellate Court has failed to discharge its function properly as it did not bother to go through statements of the witnesses in detail. Failure of the respondents to establish their plea that Mann Singh was bed ridden or was unable to move out coupled with the facts elicited in cross examination of Deed Writer, Jai Pal Sharma (DW6) and Hari Singh, Numbardar (DW5) are more than enough to discard plea of the respondents that the sale deed is the result of fraud, undue influence or impersonation.

Much has been commented by the Court in appeal with regard to factum of possession of the land in question. Sisha Singh, one of the respondents/plaintiffs appeared in the witness box whereas the other plaintiff Sardool Singh did not examine himself. In his cross examination, he has changed his stance at times with regard to factum of possession of land by Mann Singh. However, perusal of his cross examination makes it evident that Mann Singh himself had not been cultivating the land, recorded to be in his possession, as per revenue record. At one stage, he

(Sisha Singh) had stated that he and Mann Singh were cultivating the land together and others had been cultivating it separately. Later, he has admitted it correct that when Mann Singh was alive, Sahab Singh and Rana Singh had been cultivating the land. Voluntarily stated that the entire family had been cultivating the land together.

In the light of above discussed facts, the Court in appeal has grossly erred by relying upon entries in khasra girdawari to record a finding that Mann Singh himself was in cultivating possession of the suit land upto 2005-06 or till his death. Statement of Sisha Singh proves that entries in the khasra girdwari recording Mann Singh to be in possession of the land are not factually correct. This apart, if plea of the respondents is accepted that Mann Singh was aged about 90/95 years, it is otherwise difficult to accept that he had been cultivating the land himself, recorded to be in his possession though jointly owned by various co-owners including parties to the suit. In this view of the matter, entries in the khasra girdwari cannot withstand to create a doubt qua recital in the sale deed that actual possession of the suit land is already with the purchasers but they have been delivered possession as owners.

This brings the Court to the question of payment of sale consideration to Shri Mann Singh. As has been noticed hereinbefore but for the sake of repetition, Mann Singh did not contest the suit for injunction filed in the year 2005 despite the factum of sale by Mann Singh being duly recorded in the plaint Ex.D9 and written statement Ex.D10. Mann Singh did not file a suit to challenge the sale deed despite his being alive for a period of more than four years after the sale deed was registered

in February 2002 and mutation sanctioned in December 2003. The story propounded by the respondents that Mann Singh was not in a position to move out for execution and registration of the sale deed gets falsified and belied in view of discussion made hereinbefore. Sahab Singh, one of the vendees appeared in the witness box and stated that sale consideration was paid to Shri Mann Singh at the house on the date, the sale deed was executed and got registered. He has further stated that at that time, some relatives of Mann Singh were also present. As the respondents have raised a plea that the sale is without consideration, it was an obligation of the respondents to establish the same. This apart, once presence of Mann Singh with the Deed Writer at the time of preparation of the sale deed gets admitted in view of cross examination of Jai Pal Sharma (DW6), there is no reason to disbelieve his testimony that Mann Singh acknowledged receipt of payment when sale deed was drafted and factum of payment of sale consideration was got recorded. The mere fact that the respondents did not come to know as to how and where Mann Singh invested that amount is of no avail to hold that sale is without consideration. It is pertinent to add that as Mann Singh did not challenge the sale deed on any ground or on account of non-payment of sale consideration, the respondents are no body to say that the sale is without consideration.

The stamp papers were purchased by Sahab Singh but endorsement with regard to purchase of stamp papers also bears name of Mann Singh. Ordinarily, expenses for purchase of stamp papers and registration charges are incurred by the purchaser though the stamp papers are required to be purchased in the name of vendor because legal liability to

pay stamp fee is that of the vendor. In the present case, parties are closely related. Mann Singh is paternal uncle of Sahab Singh and other plaintiffs are grand sons of Kundun Singh (since deceased) brother of Mann Singh. It hardly matters if Sahab Singh himself purchased the stamp papers in the name of Mann Singh.

The Court in appeal has also taken a serious view that there is some correction in registration particulars from 1586/1 to 1582/1. It is difficult to fathom as to how this change, in the face of other particulars being intact, gives any clue or lead to say that the sale deed is the result of fraud or impersonation. If a mistake was committed while giving number to the sale deed and the same has been corrected by the official (s) of the registering authority, the appellants cannot be blamed or condemned for the same.

The appellate Court has commented adversely qua evidentiary value of testimony of Hari Singh, Numbardar DW5. If Mann Singh along with Sahab Singh had already appeared before the Tehsildar before Hari Singh, Numbardar reached the office of Tehsildar, the same is not sufficient to say that the sale deed was not registered at the behest of Mann Singh. The respondents/plaintiffs have not examined any witness to prove that the sale deed does not bear thumb impressions of Mann Singh either as an executant or at the time of registration by the concerned authority. Presumption of correctness is available to the endorsement of registering authority. As the respondents failed to prove that Mann Singh was disable to execute the sale deed, the mere fact that Mann Singh had already appeared before the registering authority cannot be construed to record a

finding in favour of the respondents that sale deed in question is the result of fraud, undue influence or impersonation. In this view of the matter, it can safely be held that the reasons which swayed mind of the appellate Court to set aside the sale deed in question and judgment and decree passed by the trial Court are the result of complete non-application of mind and failure to appreciate the entire evidence in right perspective and ignoring the reasoning adopted by the trial Court to negate plea of the respondents/plaintiffs. It further appears that as the sale deed purportedly executed by Ms Bal Kaur on 21.09.2006 was set aside in a separate suit, the appellate Court without considering that the sale deed in question was executed 4½ years prior thereto, started finding faults in the defence raised by the appellants but without understanding that until the respondents/plaintiffs are successful to discharge onus of material issues, the appellants could afford to maintain complete silence. That being so, the judgment and decree passed by the Court in appeal suffer from perversity and liable to be set aside.

For the reasons recorded herein before, the appeal is allowed. The judgment and decree passed by the appellate Court are set aside. As a natural corollary, the judgment and decree passed by the trial Court are restored. Consequently, the suit filed by the respondents/plaintiffs seeking declaration, permanent injunction and joint possession is dismissed with costs throughout.

(Rekha Mittal)
Judge

23.05.2018

mohan bimbra

Whether speaking/reasoned: Yes/No

Whether reportable : Yes/No