

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5563 of 2017 (O&M)

Date of Decision: November 26, 2018

Bimla Sharma & another

...Appellants

Versus

Gurbachan Singh alias Bachan Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Kuldip Sanwal, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

Appellant- plaintiffs have not been successful in laying challenge to the sale deed dated 13.11.1985 allegedly executed by Bishamber Dass, their father, in favour of Gurbachan Singh, brother of tenant Karnail Singh. It was alleged that Bishamber Dass, owing to ill health, was living with his daughters and at his back, Karnail Singh tenant, who had been paying the rent till 2008, got executed the sale deed, by impersonation, in favour of his brother Gurbachan Singh.

Defendant opposed the suit by defending the sale deed, *ibid*, executed in lieu of sale consideration. It was asserted that Bishamber Dass voluntarily executed the sale deed on receipt of the sale consideration.

Mr. Kuldip Sanwal, learned counsel representing the appellant- plaintiffs submitted that the core issue for consideration is that the defendant withheld the original sale deed dated 11.01.1985 from the notice of the courts and as well as the plaintiffs. In the absence of the same,

signatures of Bishamber Dass could not be tallied with the admitted one, therefore, an adverse inference is liable to be drawn. Examination of son of a scribe was immaterial. The contents of the application also revealed that the original sale deed was lost only few months before the application for secondary evidence was filed, which itself was a pointer for ignoring secondary evidence.

On going through the memorandum of appeal preferred before the Lower Appellate Court, order dated 13.05.2014 allowing the secondary evidence as per the provisions of Order 43 Rule 1A CPC has not been challenged. Bishamber Dass stated to have died on 25.07.1986 almost a year thereafter, but did not challenge. It is unbelievable that a registered document which has been executed during life time of Bishamber Dass, was assailed only in 2009. The ingredients of fraud and misrepresentation are also conspicuously wanting.

For the reasons stated above, I do not find any illegality or perversity in the concurrent findings of fact and law. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

November 26, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No