

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

RSA No.5814 of 2017 (O&M)

Date of Decision.01.03.2018

Smt. Sudesh Rani

.....Appellant

Vs

Chander Kant Sharma and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Deepak Sharma, Advocate for
Mr. Pankaj Bali, Advocate
for the appellant.

Mr. A.D.S. Jattana, Advocate
for respondent No.3.

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AMIT RAWAL J.(ORAL)

C.M. No.15360-C of 2017

For the reasons stated in the application, delay of 29 days in
filing the appeal is condoned.

Application is allowed.

RSA No.5814 of 2017

The appellant-plaintiff is aggrieved of the concurrent finding of
fact whereby the civil suit claiming declaration that the plaintiff had been
owner in possession of the residential house bearing No.915 ward No.25,
Nai Abadi Khanna, District Ludhiana as per the site plan comprising in
khasra No.461 and challenging the sale deed dated 23.05.2000 bearing
vasika No.697 for alleged consideration of ₹63,000/- and sale deed dated
23.2.2007 bearing vasika No.5774 for alleged consideration of ₹2,70,000/-
being null and void and further grant of permanent injunction for restraining
the defendants from forcibly and illegally dispossessing the plaintiff and

property, has been dismissed.

The appellant-plaintiff instituted the suit claiming the aforementioned relief on the ground that the said document was a security as it was a fully constructed residential house and could not have been sold for a paltry amount of ₹63,000/-. It was only a loan advanced by the defendant No.1 to the plaintiff and therefore, it could not be treated as a sale deed. The value of the property was almost ₹2,70,000/- and the defendants fraudulently got the sale deed executed under the garb of security document. When the defendants threatened to dispossess the plaintiff, the cause of action arose, hence the suit.

The aforementioned suit was contested by the respondents-defendants by taking preliminary objections of the suit being not maintainable and time barred as it was filed in January, 2008 whereas the sale deed was executed in the year 2000 and vide sale deed dated 23.02.2007, the defendant No.1 further sold the property to defendant No.3 through General Power of Attorney, defendant No.2, and mutation was also sanctioned in favour of the defendant No.3. It was actually the plaintiff who intended to sell the property and bore the photographs upon the sale deed. No fraud had been played upon the plaintiff and the suit had been filed out of greed as it was the plaintiff who had approached the defendant for execution of the sale deed.

Since the parties were at variance, the trial court framed the following issues:-

- “1. Whether the plaintiff is entitled to declaration as prayed for?OPP*
- 2. Whether the plaintiff is entitled to permanent injunction as prayed for?OPP*
- 3. Whether suit of the plaintiff is within limitation? OPP*

4. *Whether suit is not maintainable? OPD*
5. *Whether the plaintiff has concealed material facts? OPD*
6. *Relief.”*

On the basis of preponderance of the evidence, the trial Court dismissed the suit which was upheld in the appeal by the lower Appellate Court.

Mr. Deepak Sharma for Mr. Pankaj Bali, learned counsel appearing on behalf of the appellant submitted that both the Courts below have overlooked important aspects of the matter that the plaintiff had proved the factum of possession of the property in dispute and both the sale deeds to be null and void, for, had the appellant-plaintiff sold the property in the year 2000, it is not discernible as to how the possession has not been taken for so long. Once the possession remained with the appellant-plaintiff, the only conclusion that was liable to be drawn was that it was a loan transaction. The appellant-plaintiff had led substantial evidence on record to prove the aforementioned ingredients which remained unrefuted, as the defendant No.1 was proceeded ex parte. There was no limitation for claiming the right on the basis of title, therefore, the suit filed in the year 2008 was not barred by limitation, thus, urges this Court for determination of substantial questions of law as carved out in the memorandum of appeal.

Notice of motion.

Mr. ADS Jattana, appearing for the caveator accepts notice for the respondents.

Mr. Jattana submitted that the concurrent finding of fact cannot be tinkered with as no ground for interference is made out. A registered document carries presumption of truth unless it is strongly rebutted. The suit was filed in the year 2008 and no explanation has come forth for not

filing the same within time frame, thus, urges this Court for dismissal of the appeal.

I have heard leaned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Sharma, for, the sale deed dated 23.5.2000 was an voluntary act on behalf of the appellant-plaintiff as no explanation has come forth for not challenging the same for all these years i.e. till 2008. It is only when the aforementioned property was sold vide sale deed dated 23.02.2007 to defendant No.3 for a higher amount, the greed surfaced.

This Court has come across to the incidents when parties volte-face owing to the fact that price of the property suddenly shoots up over a period of time and file suit challenging the sale deed by concocting a story as has been done in the instant case. No direct and cogent evidence had been brought on record to prove that the sale deed dated 23.05.2000 was a security document. If at all, some fraud had been played upon the plaintiff, nothing prevented her to institute the appropriate criminal proceedings but having failed to do so, the argument of Mr. Sharma has not been able to cut ice to enable this Court to form a different opinion.

In view of the aforementioned, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 01, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No