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

**RSA No.6203 of 2017 (O&M)**
**Date of Decision:21.12.2018**

**Jaswinder Kaur**

**.....Appellant**

**Vs**

**Jatinder Singh**

**....Respondent**

**CORAM:** ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Alok Mittal, Advocate
for the appellant.

Mr. Kuldip Sanwal, Advocate
for the caveator/respondent.

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***RAJ MOHAN SINGH, J.***

[1]. Plaintiff is in Regular Second Appeal against the judgments and decrees passed by the Courts below in a suit for declaration and permanent injunction.

[2]. Brief facts are that the plaintiff/appellant filed a suit for declaration and permanent injunction wherein she challenged the registered sale deed dated 09.10.2002 executed by her in favour of her son Jatinder Singh in respect of House No.5-B, Dashmesh Nagar, Tripuri Saidan, Patiala. The said sale deed was challenged on the basis of fraud and misrepresentation and

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the same was claimed to be fraudulent and without consideration. Permanent injunction was also sought seeking to restrain the defendant from interfering in the possession of the plaintiff over the suit property.

[3]. It was alleged that the plaintiffs had two sons and two daughters. Her husband Baljinder Singh had died. Defendant is elder son of the plaintiff. Younger son of the plaintiff was living separately. Daughter of the plaintiff is a divorcee and she was living with the plaintiff along with her daughter. The suit property was purchased by husband of the plaintiff after taking loan and thereafter the plaintiff and her husband got the house/suit property constructed in the year 1987. Husband of the plaintiff died on 13.05.2007. Plaintiff and her younger son performed his last rites. Plaintiff claimed herself to be in possession of the suit property. She came to know about the registered sale deed and thereafter obtained certified copy of the same on 20.05.2009. Plaintiff asserted that she never sold the house in question to the defendant, nor had received any such consideration. Possession of the house was never delivered to the defendant. Defendant had played fraud upon the plaintiff and managed to get the signature of the plaintiff on the sale deed. The sale deed was never implemented in the revenue record. The sale deed was shown in respect of a plot, whereas house was constructed

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in the year 1987. The sale deed was claimed to be fake transaction altogether.

[4]. Defendant contested the suit thereby admitting the relationship between the parties. He admitted that divorcee sister of the defendant is residing in the house along with the plaintiff. Defendant asserted that he had raised the construction with his own funds. Initially the house was constructed by Baljinder Singh i.e. father of the defendant. Defendant had purchased the suit property for a consideration of Rs.2 lakhs vide sale deed dated 09.10.2002. Plaintiff had appointed her husband as Special Power of Attorney on 09.10.2002 in order to get the mutation sanctioned in favour of the defendant. Mutation was sanctioned in favour of the defendant. Defendant used to take care of his ailing father, who had extended monetary help to his other son in order to construct the house for him in Dashmesh Nagar, Patiala. Defendant had performed the last rites of his father. Defendant further claimed that the suit has been filed by the plaintiff under the influence of her daughter.

[5]. Both the parties went to trial on the following issues:-

*"1. Whether the sale deed dated 9.10.02 is without consideration, illegal, null and void and result of fraud and mis representation? OPP*

*2. Whether the plaintiff is entitled to the relief of*

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*declaration as prayed for? OPP*

3. *Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for? OPP*

4. *Whether the plaintiff has no cause of action to file the present suit? OPD*

5. *Relief."*

[6]. Onus of issue No.1 was on the plaintiff himself. Both the Courts below have concluded that the plaintiff has not led any evidence to prove any fraud in respect of execution of sale deed.

[7]. Learned counsel for the appellant submitted that the sale deed was not properly stamped. No attesting witness of the sale deed was examined. The sale deed was in respect of vacant plot , whereas house was constructed in the year 1987. Defendant was in fiduciary relationship and, therefore, burden to prove the document to be genuine was on the dominant character. In such a situation, even though the onus was fastened upon the plaintiff to prove that the sale deed was fraudulent in nature, still the onus shifted upon the defendant to prove due execution of the sale deed. Since no attesting witness was examined by the defendant, therefore, in terms of Section 68 of the Evidence Act, no reliance could have been placed upon the sale deed.

[8]. Learned counsel further submitted that as per Section

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35 of the Stamp Act, the sale deed cannot be admitted in evidence. Learned counsel by relying upon ***M/s SMS Tea Estates Pvt. Ltd. vs. M/s Chandmari Tea Co. Pvt. Ltd., 2012(1) R.C.R. (Civil) 305*** contended that the document could not be relied upon for want of proper stamp duty and the same could have been impounded by the Court under Section 33 of the Act.

[9]. On the other hand, leaned counsel for the respondent very vehemently submitted that execution of sale deed has been admitted by the plaintiff. However, the same has been challenged only on the ground of non-passing of consideration. The sale deed was executed in the year 2002 and the suit came to be filed only in the year 2009. The plaintiff herself appointed her husband as Special Power of Attorney for sanctioning of mutation in pursuance of sale deed in question. The husband of the plaintiff remained alive for five years after execution of the sale deed. No suit was filed during life time of husband of the plaintiff. Husband of the plaintiff died on 13.05.2007 and no suit was filed during the life time of Baljit Singh i.e husband of the plaintiff. Even no evidence was led on the plea of misrepresentation and impersonation.

[10]. Learned counsel further submitted that the sale deed was executed for lawful consideration of Rs.2 lakhs. The sale

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deed is defined as being a transfer of ownership for a price. There will be absolute transfer of all rights in the property subject matter of sale. No rights are left with the transferrer. The price is fixed by the contract antecedent to the conveyance. In a way price is the essence of contract of sale. There is only one mode of transfer by sale in respect of immovable property for value of Rs.100/- or more and that is why a registered instrument. Payment of entire price/consideration is not a condition precedent for completion of sale by passing of title in view of Section 54 of Transfer of Property Act. The aforesaid provision defines a 'sale' as a transfer of ownership in exchange for a price paid or promised or partly promised. In the event of non-payment of consideration or balance consideration remedy available to the vendor is only to sue for the balance price by way of filing a suit for recovery. The vendor cannot avoid the sale. Once the registered instrument is executed and carries an endorsement to that effect that the seller had obtained sale consideration from the purchaser, then there will be an absolute payment of sale consideration which has to be rebutted by the seller by leading cogent evidence. In view of ratio as laid down by the Hon'ble Apex Court in ***Kaliaperumal vs. Rajagopal and another, 2009(2) R.C.R. (Civil) 471*** the aforesaid proposition can be appreciated in the present context.

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[11]. Learned counsel further submitted that the dictum laid down by the Hon'ble Apex Court is a law. The expression 'law' includes judicial precedents of the Hon'ble Apex Court. The authoritative pronouncements of the Hon'ble Apex Court is the law of land. Reference can be made to ***Bhargvi Constructions and another vs. Kothakapu Muthyam Reddy and others, 2017(4) R.C.R. (Civil) 359.***

[12]. I have considered the submissions made by learned counsel for the parties and have perused the relevant record.

[13]. The recital of the sale deed pointed out passing of consideration to the tune of Rs.2 lakhs. No evidence to the contrary has been led by the plaintiff. Mere fact that only plot was shown in the sale deed in place of constructed house would not make the sale deed to be forged and fabricated. The execution of sale deed was admitted by the plaintiff. It was only the alleged non-passing of consideration which was made basis for alleging fraud in execution of sale deed. The executant of a sale deed i.e. plaintiff has turned around and said that the same was fraudulent. Such a proposition is not available to the plaintiff in view of ratio of ***Kaliaperumal's*** case (supra).

[14]. Since the sale deed is shown to have been executed with a consideration, therefore, in the absence of any evidence

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to the contrary in terms of non-passing of consideration, the plea as raised by the plaintiff on the basis of M/s ***SMS Tea Estates Pvt. Ltd.'s*** case (supra) cannot be appreciated. Plaintiff was required to show that the execution of the sale deed was not a voluntary act on her behalf. For want of any evidence to that effect, no consideration can be made on the aforesaid proposition. The sale deed was executed in the year 2002. Execution of Special Power of Attorney in favour of her husband for the purpose of mutation could not be explained by the plaintiff that the same was not for the purpose of mutation and other transaction except the sale deed in question. In view of above, filing of suit in the year 2009 would also negate the theory as propounded by the plaintiff.

[15]. It is true that the person relying upon the document/instrument has to prove the same positively by leading evidence. Once the document is admitted, then the same requires no evidence to be led. The factum of sale deed has been admitted. The same was only challenged on the basis of fraud based on non-passing of consideration.

[16]. In view of such factual position, Section 68 of the Evidence Act would not attract. The plea of fiduciary relationship would not come into being. The mutation was sanctioned in favour of the defendant in the presence of his father i.e.

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husband of the plaintiff. No challenge to the sale deed was made during the period of 5 years when husband of the plaintiff was alive.

[17]. In view of aforesaid, both the Courts have appreciated the evidence available on record and such appreciation cannot be held to be on account of misreading of evidence or with any perversity. No question of law worth consideration is involved in the present appeal. The appeal is accordingly dismissed.

December 21, 2018 **(RAJ MOHAN SINGH)**
*Atik* **JUDGE**
Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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