

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

RSA No.6301 of 2017 (O&M)

Date of decision:30.04.2018

Amar Singh

... Appellant

Vs.

Gopi Ram

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Gazi Mohd. Umair, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

Appellant-plaintiff is aggrieved of the concurrent findings of facts and law, whereby, suit seeking declaration challenging the alleged mortgage deed dated 13.07.1999 executed by playing fraud and misrepresentation upon the plaintiff with a consequential relief of permanent injunction for forcible interference and dispossession, has been partly allowed by the trial Court and upheld by the Lower Appellate Court.

The aforementioned suit was filed on the premise that respondent-defendant/Gopi Ram in connivance with Sher Singh Namberdar and Jarnail Singh made believe to the appellant that it was a simple mortgage without possession and by believing the same had put the thumb impressions in good faith and when the plaintiff approached the defendant to get the said properly redeemed but the defendant refused to accept the request of the plaintiff, rather tried to take the forcible possession on the

basis of alleged sale deed executed by plaintiff in favour of defendant, thus, cause of action arose to file the suit.

Defendant-respondent contested the suit by filing a written statement. It was stated that plaintiff in senses had executed a registered sale deed dated 13.07.1999 for valuable consideration in respect of land measuring 4 kanals 5 marlas bearing khasra no.65//10/2 min (4-5).

Since both the parties were at variance, the trial Court framed as many as 6 issues including the issue of Relief. On the basis of preponderance of evidence, the trial Court partly allowed the suit with regard to share holding of land measuring 4 kanals 5 marlas by declining the relief of declaration vis-a-vis documents on the ground that respondent-defendant, who purchased the share from the plaintiff, had already filed the application for partition which is pending adjudication. The appeal laid before the Lower Appellate Court also met with the same fate.

Mr. Gazi Mohd. Umair, learned counsel for the appellant-plaintiff submitted that both the witnesses did not prove the execution of the aforementioned sale deed which was result of fraud and mis-representation, much less no consideration was passed. The cause of action accrued only in the year 2008 when he applied for the certified copy of sale deed, thus, there was mis-direction and mis reading of the documents resulting into illegality and perversity in the findings rendered by both the Courts below.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees of both the Courts below and of the view that no explanation has come forth in not challenging the sale deed

within a period of three years. It was a case of possession and application for partition was pending, thus, by relying upon the judgment of this Court, the Court below rejected the claim of appellant-plaintiff. The witnesses may over a period of time toe to the line of one of the parties but the documents may not. A registered document carried a presumption of truth which remained valid till 2008 almost for 09 years and no explanation has come forth in not challenging the same.

The concurrent findings of facts and law are based upon the appreciation of oral and documentary evidence. The arguments of Mr. Umair are not able to bring the case within the realm of illegality and perversity for formulating the substantial questions of law or to form the different opinion than the one arrived at by the Courts below.

No ground is made out for interference in the impugned judgments and decrees under challenge.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

April 30, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No