

RSA-6467-2017 (O&M)

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

**RSA-6467-2017 (O&M)
Date of decision : 29.11.2018**

Rameshwar Singh and another

... Appellants

Versus

Raju (D) through LR's and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.K. Agnihotri, Advocate
for the applicants/appellants.

AMIT RAWAL, J.

CM-17544-C-2018

For the reasons stated in the applicant, the application is allowed and the appeal is ordered to be restored to its original number i.e. RSA-6467-2017.

CM-16693-C-2017

For the reasons stated in the application, the delay of 115 days in refiling of the appeal is condoned.

CM stands disposed of.

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The appellants-plaintiffs have not been successful in claiming declaration of ownership and joint possession to the extent of 13/364th share by laying challenge to the sale deed dated 13.03.2006 with consequent relief of permanent injunction restraining the defendant from alienating the suit land.

It was alleged that the land, subject matter of the suit, was

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allotted by way of release deed dated 20.02.2006, thus, in such circumstances, the plaintiffs had been co-owner in joint possession. Out of the land measuring 31 kanals 14 marlas, the plaintiffs agreed to sell 12/634th share to Omwati Devi and Pooja, for a sale consideration of ₹90,000/-. The plaintiffs agreed to sell the land in favour of the aforementioned ladies, but later on acquired, defendant No.3-Makshood appeared on behalf of he purchaser, who was witnessed by husband of Pooja. The sale deed was entered in favour of defendant No.1 without any consideration and the sale of 13 marlas of land was shown to be ₹20,000/- against ₹90,000/-.

The Defendants opposed the suit and alleged that Rameshwar Singh and Hariom Singh (plaintiffs), vide registered sale deed dated 13.03.2006, sold their 13 marals of land to defendant No.1-Raju, for a sale consideration of ₹20,000/- and the possession was also delivered. Even mutation, in this regard, was sanctioned on 27.06.2006.

The plaintiff examined two witnesses and brought on record Ex.P1 and P2, whereas the defendant examined himself as DW1 and brought on record Ex.D1 to D4.

Learned counsel for the appellants-plaintiffs submitted that both the Courts below failed to appreciate that the plaintiffs acquired the knowledge of fraudulent sale deed only on 20.04.2011, when the defendants for the first time came to the house of the plaintiffs and asked for possession. The possession had been established through khasra girdawaris (Ex.P5). The plaintiffs had intended to sell the land measuring 12 marals for ₹90,000/- and had executed Vasika No.7351, but the defendants managed to get Vasika No.7352, subject matter of the sale deed. The certificate on the sale deed did not reflect that the sale consideration was exchanged in the

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presence of sub-registrar.

I have heard learned counsel for the appellant-plaintiff and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Agnihotri, for, it is unbelievable that a person, who had already executed a sale deed of 2006, remained oblivious of the same as late as, when the suit in the year 2011, was filed. The contents of the sale deed did not reveal a single factum of fraud and misrepresentation. The registered document carries a presumption of truth. It is obligatory upon the plaintiffs to not only plead ingredients of fraud, but prove the same. In the absence of evidence, the Courts below had no occasion, but to dismiss the suit.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Agnihotri, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

29.11.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**