

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

RSA No. 2500 of 2013 (O&M)
Date of decision: 17.5.2019

Tarsem Singh

...Appellant

Versus

Harbhajan Singh

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. P.S. Brar, Advocate,
for the appellant.

Mr. Arshdeep Singh, Advocate,
for the respondent.

JAISHREE THAKUR, J.

The instant Regular Second Appeal has been preferred against the judgments and decrees dated 26.7.2011 and 4.12.2012 passed by Additional Civil Judge (Senior Division) and District Judge, Sri Muktsar Sahib, respectively, vide which the civil suit filed by the plaintiff/appellant herein has been dismissed.

The facts in brief are that the plaintiff/appellant herein filed a suit seeking declaration that the plaintiff/appellant is the owner in possession of the suit property, as detailed and described in the head note of the plaint, and that the sale deed No. 1514 dated 3.3.2005 is without consideration and result of fraud and the same does not affect the rights of the plaintiff. It was averred in the plaint that plaintiff/appellant is co-owner of the suit property, which he had mortgaged with the defendant/respondent

on 13.2.1999 for a sum of ₹1,50,000/-, but the possession remained with the plaintiff. It was submitted that the plaintiff had returned the mortgaged amount of ₹1,50,000/- to the defendant on 28.2.2005 in the presence of witnesses. The defendant/respondent in connivance with the Deed Writer got a sale deed executed in his favour with regard to land measuring 10 kanal 10 marlas owned by the plaintiff and, therefore, sought a declaration and permanent injunction, as prayed in the civil suit.

On notice, the suit was contested by the defendant/respondent. It was pleaded by the defendant/respondent is a bonafide purchaser for valuable consideration and the suit has been filed just to harass the humiliate the defendant and the defendant/respondent is in possession of the land in dispute. Replication was filed reiterating the averments made in the plaint. On completion of the pleadings, the trial court framed as many as eight issues. Thereafter, the parties led evidence in support of their respective claims.

Learned counsel appearing on behalf of the appellant submits that the both the courts below have recorded the findings against the evidence brought on record. It is submitted that the sale deed in respect of the land in dispute had been executed by playing fraud and misrepresentation with the appellant in connivance with the witnesses and the Deed Writer. The moment it came to the notice of the appellant from the Halqa Patwari, he immediately challenged the sale deed by way of filing the instant civil suit. The respondent failed to prove that he is bonafide purchaser for valuable consideration.

Per contra, learned counsel appearing on behalf of the

respondent, while supporting the impugned judgments and decree, submits that since the appellant/respondent was not able to establish his claim made in the plaint, therefore, both the courts below rightly dismissed the civil suit filed by the appellant and there is no scope for interference by this Court in the concurrent findings of facts recorded by the courts below.

On appreciation of the oral as well documentary evidence led by the parties, the trial court, while dismissing the civil suit filed by the plaintiff/appellant held as under:-

“From the appreciation of the evidence discussed about it is proved that the plaintiff has sold his land measuring 10 kanal 10 marla vide registered sale deed dated 28.02.2005 Ex. D1 to the defendant for a consideration of Rs. 62,500. It is clearly mentioned in the sale deed that entire sale consideration has been received by plaintiff from the defendant and that now nothing is due and outstanding against the defendant. This sale deed was duly registered before the Sub Registrar, Bariwala on 3.3.2005 and endorsement of Sub Registrar Ex. DW1/A was made by him and Sub Registrar when appeared in the witness box as DW-3 has categorically deposed that this sale deed was presented before him for registration and that he in the presence of the marginal witnesses had read over the contents of the sale deed to the parties and the parties have admitted the same to be correct had signed at the back side of first page of the sale deed and then he in his capacity as Joint registrar made his endorsement and registered the document and signed on it. His testimony virtually has ruled out any wrong doing at the hand of the defendant as being alleged by the plaintiff because in the eventuality of the sale deed being without consideration the plaintiff certainly would have raised the objection before the competent lawful authority i.e. DW-3

Joint Sub Registrar but he failed to do so for the simple reason that he himself got the ale deed executed after receiving the full sale consideration out of his free will.”

Aggrieved against the dismissal of the civil suit, the plaintiff/appellant preferred an appeal before the first Appellate Court. The first Appellate Court, while affirming the finding of fact recorded by the trial court dismissed the appeal, leading to the filing of the instant appeal.

From a bare reading of the evidence brought on record, due registration of the sale deed dated 28.2.2005 Ex. D1 stand proved by the respondent herein. This sale deed was duly registered before the Sub Registrar, Bariwala on 3.3.2005 and endorsement of Sub Registrar Ex. DW1/A was made by him and the Sub Registrar when appeared in the witness box as DW3 has categorically deposed that this sale deed was presented before him for registration and that he in the presence of the marginal witnesses had read over the contents of the sale deed to the parties and the parties while admitting the same to be correct had signed at the back of the first page of the sale deed and then he in his capacity as Joint Registrar made his endorsement and registered the document and signed on it. It is clearly mentioned in the sale deed that entire sale consideration has been received by the plaintiff/appellant from the respondent/defendant. Both the courts below have appreciated the documentary as well as oral evidence on record and the pleadings of the parties in right perspective and no fault could be found in the same. Learned counsel for the appellant has not been able to point out any perversity or irregularity in the impugned judgments. The judgments of both the courts below are well considered. No

question of law, much less substantial question of law arises for consideration in the present appeal.

The Regular Second Appeal stand dismissed accordingly.

17.5.2019

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No