

**In the High Court of Punjab and Haryana at Chandigarh**

**RSA- 2 of 2016 (O&M)**

**Date of Decision:13.9.2019**

**Sudesh Kumari and another**

**---Appellants**

**vs.**

**Vidya Devi and others**

**---Respondents**

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

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**Present:** Mr. HPS Ishar, Advocate  
for the appellants

Mr. Dinesh Arora, Advocate  
for respondent No. 2(i)

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**Rekha Mittal, J.**

**CM No. 5-C of 2016**

Prayer in this application is for impleading legal representatives of Nand Kishore respondent No. 3 (since deceased).

In view of averments made in the application supported by an affidavit of Krishan Singh, appellant No. 2 and arguments advanced by counsel for the applicants, the application is allowed and persons mentioned in para No. 2 of the application are allowed to be brought on record as legal representatives of Nand Kishore-respondent No. 3 (since deceased), for the purpose of present lis only, subject to just exceptions.

Disposed of accordingly.

**Main case.**

Challenge in the present appeal has been directed against

judgment and decree dated 4.9.2015 passed by the Additional District Judge, Rohtak whereby appeal against judgment and decree dated 24.4.2012 passed by the trial court was accepted and suit filed by the appellants-plaintiffs for declaration and permanent injunction was dismissed.

The appellants-plaintiffs along with their co-plaintiffs claimed themselves to be owners in possession of suit house bearing M.C. No. 382/18(P), situated in Gali No. 1, Ravi Dass Mohalla, Arya Nagar, Rohtak by assailing sale deed dated 4.11.2004 in favour of defendant No. 1, in respect of suit house. They challenged the aforesaid sale deed inter alia on the grounds that Bharat Singh and plaintiffs were members of joint Hindu family and suit house was ancestral property. Bharat Singh was a drunkard and sale deed was got executed from him by misrepresentation and fraud. The sale deed is without any lawful consideration and liable to be set aside being null and void.

The defendants/respondents filed the written statement raising preliminary objections with regard to maintainability; suit being barred by limitation; not properly valued for the purpose of court fee; jurisdiction etc. On merits, it was admitted that Bharat Singh was owner and in possession of suit house. It is averred that suit property was sold by Bharat Singh to defendant No. 1 vide registered sale deed bearing Vasika No.7380 dated 4.11.2004 for a valuable consideration of Rs. 42,000/-. The possession of suit house was handed over to defendant No. 1 after execution of sale deed. All material averments on the basis whereof the plaintiffs challenged the aforesaid sale deed were denied with a prayer for dismissal of the suit.

The trial court framed issues, reproduced in para 3 of judgment

of the said court. Having heard counsel for the parties in the light of materials on record, the trial court negated plea of the plaintiffs that suit property was ancestral coparcenary property in the hands of Sh. Bharat Singh or Sh. Bharat Singh was drunkard and executed sale deed under influence of liquor. However, the trial Court, in view of its observations recorded in paras 20 and 21 of the judgment, had accepted plea of the plaintiffs that sale deed is without consideration and the same is void, as per provisions of Section 25 of the Indian Contract Act, 1872.

The plaintiffs did not file any cross objections to challenge findings of the trial court rejecting their claim with regard to suit property being ancestral coparcenary property or the sale deed was executed by the deceased under influence of liquor, therefore, it was not an act of voluntary disposition of the suit property. As such, findings of the trial court on the aforesaid aspects of the matter attained finality.

The Court in Appeal, set aside findings of the trial court with regard to sale deed being without consideration, in view of observations made in para 17 onwards and eventually appeal filed by the respondents-defendants was accepted.

Counsel for the appellants has supported findings of the trial court particularly observations made in paras 20 and 21 of judgment of the said court with regard to sale deed being without consideration, therefore, rendered void ab initio under Section 25 of the Contract Act.

Counsel for the respondents, on the contrary, has supported the view taken by the First Appellate Court with the submissions that the trial court failed to correctly appreciate that a presumption of correctness is

attached to endorsement made by the registering authority in discharge of its official function, under Section 60 of the Registration Act, 1908. It is argued that the sale deed was executed by Sh. Bharat Singh in the presence of his two sons namely Ganga Bishan and Nand Kishore who have also appended their signatures being attesting witnesses to the sale deed. Nand Kishore is one of the plaintiffs but he did not appear in the witness box without any tangible explanation, therefore, an adverse inference is liable to be drawn against the appellants for failure to examine Sh. Nand Kishore.

I have heard counsel for the parties, perused the paper book and records.

There is no dispute that the sale deed in question was executed by Bharat Singh (since deceased) on 4.11.2004. Bharat Singh remained alive till 7.2.2006 i.e. more than one year after execution of the sale deed. The plea of appellants that Bharat Singh executed sale deed under influence of liquor was negated by the trial court and has attained finality. That being so, Bharat Singh executed the sale deed in a fit state of mind. Since Bharat Singh never assailed the sale deed during his life time even on the ground that the same is without consideration, it goes a long way to create doubt in version of the plaintiffs that the sale deed is without consideration. Not only this, no prudent person would alienate his property without receiving sale consideration. In the instant case, two sons of the executant namely Nand Kishore and Ganga Bishan were also present at the time of execution of sale deed, therefore, there was no possibility of their having attested the sale deed if the vendee had not paid sale consideration. The registering authority Rohtak made an endorsement that sale deed was accepted as

correct by both the parties and also accepted the factum of receipt of Rs. 42,000/- towards sale consideration. A presumption of correctness can be attached thereto.

As has been rightly argued by counsel for the respondents, Nand Kishore plaintiff No. 2 did not appear in the witness box to say on oath that sale deed is without consideration. The trial court failed to appreciate that adverse inference is liable to be drawn against the plaintiffs for their failure to examine Nand Kishore son of the deceased and one of the attesting witnesses of the sale deed though Ganga Bishan other son of the deceased has since passed away and is represented by his legal representatives plaintiffs No. 8 to 12. All these facts lead to an irresistible conclusion that sale deed in question was executed by the deceased for a valuable consideration but after death of Bharat Singh his class-I heirs became greedy and tried to wriggle out of the transaction by raising various contentions including the sale deed being without consideration. They actually became successful in their venture to assail the sale deed being without consideration before the trial court but fortunately error committed by the trial court was rightly rectified by the Court in Appeal. The Appellate Court has rightly held that the plaintiff has to stand on his own legs to be successful in the litigation and he cannot derive any advantage from weakness of defence. In view of the discussion made hereinbefore, it is difficult to accept contention of the plaintiffs/appellants that the registered sale deed is without consideration, therefore, the appellants cannot derive any advantage to their contention from any discrepancy in the case of defendants with regard to payment of sale consideration. The question of

defendants proving the sale consideration would have arisen had the plaintiffs successfully discharged onus of proving that the sale deed is without consideration. In this view of the matter, I do not find an error much less perversity in the judgment passed by the first appellate court, warranting intervention.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed with costs.

**(Rekha Mittal)**  
**Judge**

**13.9.2019**  
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Whether speaking/reasoned: Yes  
Whether reportable : Yes/No