

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

**RSA No.6993 of 2016 (O&M)
Date of Decision.02.04.2019**

Mewa Singh ..Appellant
Vs
Jankar Singh ...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Chauhan, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is directed against the concurrent finding of fact whereby the appellant-plaintiff had not been successful in challenging the sale deed dated 12.08.2005 allegedly executed by him in favour of the defendant.

It was alleged that Chattar Singh father of defendant and Mewa Singh were real brothers. Both the parties had agreed to partition the property and in this regard, Patwari was called but under the garb of partition, prepared sale deed and obtained its registration, thus, it was day light robbery. Even otherwise, there was no consideration passed, as the plaintiff was affected by polio.

Defendant opposed the suit and stated that plaintiff is slightly handicap on account of polio but stated to be quite mobile and live a normal life except difficulty in walking. Sale consideration of ₹2,61,500/- was paid to the plaintiff at the house of defendant in the presence of Dhuyrav Singh and Baldev Singh, Ex-Sarpanch and sale deed was drafted by a deed writer.

Both parties led in evidence and proved not only passing of consideration but cause of action and intention of parties.

The trial Court dismissed the suit and the appeal taken before the lower Appellate Court was also dismissed.

Mr. Chauhan, learned counsel appearing on behalf of the appellant submitted that DW1 in cross-examination did not deny factum of summoning of Patwari for the purpose of partition and there are contradictions in the cross-examination as noticed by the trial Court but despite that plaintiff has been non-suited. No consideration was passed, much less, any source of income was shown to prove paying capacity or mode of payment, thus, ingredients of fraud and misrepresentation were writ large.

I am afraid aforementioned argument is not sustainable for the simple reason that if at all, there was some fraud or misrepresentation, the plaintiff would have attempted to initiate criminal proceedings against the defendant. Be that as it may, Dhuyrav Singh and Baldev Singh both attesting witnesses deposed in the same lines. Nothing contrary surfaced in the cross-examination except little contradiction by Jankar Singh, which cannot be a ground for setting aside the sale deed as the onus to prove fraud and misrepresentation heavily lies upon the plaintiff.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 02, 2019
Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No