

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

RSA No.510 of 2019 (O&M)
Date of Decision: January 21, 2019

Chalti Devi (since deceased) through her LR

...Appellant

Versus

Bhupinder Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ashwani Talwar, Advocate
for the appellant-plaintiff.

JAISHREE THAKUR, J. (Oral)

1. The instant regular second appeal has been filed by the appellant-plaintiff seeking to challenge the judgment and decree dated 30.10.2017 passed by the Civil Judge (Junior Division), Rajpura whereby the suit of the appellant-plaintiff has been dismissed as well as the judgment and decree dated 12.09.2018 passed by the Addl. District Judge, Patiala whereby, the appeal filed by the appellant-plaintiff has also been dismissed.

2. In brief, the facts of the case as stated are that, the appellant-plaintiff filed a suit seeking declaration to the effect that sale deed dated 14.07.2003 in respect of 08 bigha 2 biswa land situated in Village Badoli Gujran, Tehsil Rajpura, District Patiala and sale deed 14.07.2003 in respect of 01 bigha 14 biswa land situated in Village Jhakhran, Tehsil Rajpura, District Patiala (details as provided in the headnote of the plaint), both got

executed by respondents No.1 and 2/defendants No.1 and 2 in their favour in connivance with deed writer and marginal witnesses from the appellant-plaintiff Chalti Devi w/o Bachan Ram are result of fraud and misrepresentation and are liable to be set aside being without sale consideration and not effective on the rights of the plaintiff. It is averred that plaintiff Chalti Devi was owner in possession of the suit land situated in Village Jakhraan and Badoli Gujran, Tehsil Rajpura, District Patiala and respondents No.1 and 2/defendants No.1 and 2 approached the plaintiff to sell the said lands to them. As such, the appellant-plaintiff entered into an agreement to sell dated 12.07.2003 with them and respondent No.1/defendant No.1 issued cheque for a sum of ₹ 50,000/- in favour of the appellant-plaintiff. The appellant-plaintiff also entered into an agreement to sell dated 11.09.2000 with them for a total consideration of ₹ 10,00,000/- in respect of the land situated at Village Badoli Gujran and date for registration and execution of sale deed was fixed as 30.06.2003. It was averred that a sum of ₹ 1,60,000/- was paid to plaintiff as earnest money. It was alleged that one Mangat Ram son of Sant Ram had started litigation with the appellant-plaintiff and then respondents No.1 and 2/defendants No.1 and 2 on the pretext that they will contest the said litigation, got thumb impression of the plaintiff and her brother on some blank papers, stamp papers and on agreement to sell dated 11.9.2000 and respondent No.1/defendant No.1 got executed power of attorney dated 18.07.2003 from the appellant-plaintiff in the name of Manjit Singh s/o Gurnam Singh, which power of attorney was later on got cancelled by the appellant-plaintiff. It was submitted that respondent No.1/defendant No.1 issued a

post dated cheque of ₹ 2,90,000/- but on presentation, the same was dishonoured due to Insufficient Funds and thereafter, it was again presented on the request of respondent No.1/defendant No.1, but it was again dishonoured because of Insufficient Funds. When the appellant-plaintiff requested respondents No.1 and 2/defendants No.1 and 2 to make the payment, they refused to make the payment of balance sale considerations, while threatening the appellant-plaintiff that they were having thumb impression of the appellant-plaintiff on the back of agreement to sell dated 11.07.2003 and on other blank papers and they shall use the same in their favour.

3. Thereafter, the appellant-plaintiff came to know that respondents No.1 and 2/defendants No.1 and 2 got executed two sale deeds in their favour in connivance with the deed writer and the marginal witnesses. It was pointed out that there was one recital in agreement that in case cheques did not clear/honour, then it will be treated as cancelled and as the cheques issued by respondent No.1/defendant No.1 has been dishonoured, therefore, the deed is cancelled and both the sale deeds dated 14.07.2003 are liable to be set aside, being result of fraud and misrepresentation of facts. It was further averred that respondents No.1 and 2/defendants No.1 and 2 with a view to cause irreparable loss to the appellant-plaintiff, had executed sale deed in favour of respondents No.3 and 4/defendants No.3 and 4. Hence, this suit.

4. Upon notice, respondents No.1 and 2/defendants No.1 and 2 appeared and filed their written statement. Apart from taking the preliminary objection as to the improper valuation of suit, plea of limitation

was also taken on the ground that suit is clearly time barred as the appellant/plaintiff had challenged the sale deeds dated 14.07.2003 in the suit filed on 01.10.2013. On merits, it was denied that Jaggu Ram is the legal heir of the appellant-plaintiff, while submitting that one Mangat Ram and others have claimed themselves to be legal heirs of Chalti Devi in one proceedings of khasra girdawari. It was averred that respondents No.1 and 2/defendants No.1 and 2 have purchased the suit land from the appellant-plaintiff in her life time. It was claimed that the appellant-plaintiff entered into agreement to sell dated 11.09.2000 with respondents No.1 and 2/defendants No.1 and 2 for a total sale consideration of ₹ 10 lacs and received ₹ 1,60,000/- as earnest money. It was further claimed that appellant-plaintiff Chalti Devi also received a sum of ₹ 2.5 lacs on 15.11.2002 and also executed one receipt thereof in the presence of witnesses. It was also averred that the appellant-plaintiff Chalti Devi also received a sum of ₹ 1,10,000/- in the presence of witnesses on 19.06.2003 and extended the date of registration of the sale deed from 11.09.2000 to 30.11.2003. On 11.07.2003, the appellant-plaintiff Chalti Devi had settled the accounts with respondents No.1 and 2/defendants No.1 and 2 regarding the entire land whereupon, she had already received due consideration regarding the sale deeds in question. It was averred that at the same time, the appellant-plaintiff Chalti Devi also executed agreement to sell of her house, bara, gohara etc. in favour of respondent No.1/defendant No.1 regarding which a cheque of ₹50,000/- was handed over to the appellant-plaintiff with date on it as 05.01.2004. On 11.07.2003, respondent No.1/defendant No.1 also paid a sum of ₹ 2,55,300/- in cash to the

appellant-plaintiff as well and in this manner, the entire payment of the land measuring 16 bigha 2 biswas and 01 bigha 14 biswas was completed. It was averred that the appellant-plaintiff failed to deliver possession of 08 bighas of land, house, bara and gohara to respondents No.1 and 2/defendants No.1 and 2 on 05.01.2004, as such, she was not entitled to get the cheques encashed, regarding which two separate suits for specific performance are pending. Other averments of the plaint were denied.

5. Respondents No.3 and 4/defendants No.3 and 4 filed their separate written statement stating that respondents No.1 and 2/defendants No.1 and 2 have sold the land measuring 01 bigha 04 biswas to Mangat Ram and Sardara Ram sons of Sant Ram vide sale deed bearing Wasika No.5529/19.12.2003. It was further averred that respondents No.1 and 2/defendants No.1 and 2 also sold land measuring 07 bigha 5 ½ biswas of village Badoli Gujran in favour of Mangat Ram and Sardara for a sum of ₹ 4.5 lacs and sale deed was executed on 10.12.2003. It was alleged that suit is bad for non-joinder of necessary party as said Mangat Ram was one of the purchasers, but he had not been impleaded as party. Remaining averments were denied.

6. Replications were filed. From the pleadings of the parties, the following issues were framed:-

1. Whether plaintiff is entitled for declaration as prayed for?OPP.
2. Whether plaintiff is entitled for joint possession as alleged?OPP.
3. Whether plaintiff is entitled for permanent injunction?OPP.

4. Whether suit is not maintainable in its present form?OPD.
5. Whether the suit is not properly valued for the purposes of court fee and jurisdiction?OPD.
6. Whether the suit is time barred?OPD.
7. Whether the defendants are bona fide purchasers for consideration without notice?OPD.
8. Whether the suit is bad for non-joinder of necessary parties?OPD.
9. Whether the plaintiff is estopped from filing the present suit by his own act and conduct?OPD.
10. Relief.

7. In order to prove his case, the appellant-plaintiff examined Sawan Singh, Record Clerk as PW1, himself examined as PW2 and examined Madan Lal as PW3. On the other hand, the respondents-defendants examined Ram Kumar as DW1, Rajiv Kumar from the office of Sub Registrar Rajpura as DW2, Sardara Ram examined himself as DW3, Rana Partap Singh, Deed Writer was examined as DW4, Gurcharan Singh, Translator was examined as DW5, defendant No.1/respondent No.1 Bhupinder Singh himself examined as DW6.

8. After hearing learned counsel for both the sides, the lower court dismissed the suit of the appellant-plaintiff and the appeal filed by the appellant-plaintiff stood also dismissed by the lower Appellate Court. Aggrieved, the instant regular second appeal has been filed.

9. Learned counsel for the appellant-plaintiff argues that both the courts below have given findings, which are beyond the oral as well as documentary evidence. It is contended that full consideration amount had not been paid to the appellant-plaintiff, as such, both the sale deeds

executed in favour of respondents No.1 and 2/defendants No.1 and 2 are result of fraud and misrepresentation and are liable to be set aside. It is also argued that the lower court has erred in holding that Jagga Ram was not the legal heir of the deceased Chalti Devi.

10. I have heard learned counsel for the appellant-plaintiff and have gone through the pleadings of the case.

11. The lower court, while dismissing the suit of the appellant-plaintiff, has noticed the deposition made by PW2 Jagga Ram during in his cross-examination that *“he knew defendant since execution of agreement to sell dated 11.9.2000 and two sale deeds were executed by Chalti Devi, one for land measuirng 08 bigha 2 biswas and second for 1 bigha 14 biswas and possession was delivered to defendants No.1 and 2. Agreement to sell dated 11.9.2000 was for 16 bigha 16 biswas for Rs.10 lacs. He also admitted land measuring 8 bigha 2 biswas purchased by defendants No.1 and 2 has been sold to Mangat Ram, Teja and Sardara. He admtited that Chalti Devi had received sum of ₹ 1,60,000/- as earnest money from defendants No.1 and 2 on 11.9.2000.”* The lower court has also taken into consideration the statements of DW1 Ram Kumar, who was attesting witness to both the sale deeds and proved the same, DW2 Rajiv Kumar from the office of Sub Registrar, Rajpura, who proved on record both the sale deeds dated 10.12.2003 (Ex.D1) and dated 19.12.2003 (Ex.D2) and Wazika No.2567 dated 14.07.2003 in favour of Bhupinder Singh and Gursewak Singh as Ex.D4 and DW4 Rana Partap, Deed Writer, who also supported the case of the respondents-defendants. The lower court also observed that the suit of the appellant-plaintiff is barred by limitation and

that Jaggu Ram failed to prove on record that he is legal heir of said Chalti Devi.

12. The lower Appellate Court, while dismissing the appeal of the appellant-plaintiff, also noticed the deposition made by PW2 Jagga Ram in his cross-examination, which were also noticed by the lower court in its judgment. So far as plea of fraud and misrepresentation took by the the appellant-plaintiff is concerned, the lower Appellate Court, observed as under:-

“12. xxx xxx xxx Meaning thereby, that the plaintiff has alleged fraud against defendants No.1 and 2 that they had obtained signatures of plaintiff as well as her brother on the pretext of contesting the case filed against Chalti Devi by Mangat Ram etc. It is pertinent to mention here that the said suit by Mangat Ram etc. was filed on 10/10/2003 as per Ex.D20. Ex.D12 is the receipt dated 15/11/2002 vide which plaintiff had received Rs.1,10,000/- from defendants No.1 and 2. Thus, on 15/11/2002, no litigation was pending between Mangat Ram etc. and Chalti Devi and as such, there was no occasion for defendants No.1 and 2 to obtain thumb impressions of Chalti Devi and Jagga Ram to defend them in the said case.”

13. The appellant-plaintiff has miserably failed to prove his case before both the courts below to the effect that the sale deeds were got executed by respondents No.1 and 2/defendants No.1 and 2 without paying the sale consideration amount. Moreover, during his cross-examination PW2 Jagga Ram has deposed in contradiction to his pleadings. Evidence led by the respondents-defendants is sufficient to presume that the sale deeds under challenge are genuine. The appellant-plaintiff set up the plea

of fraud and misrepresentation, however, miserably failed to prove the same. It goes without saying that it is very easy to raise a plea of fraud but it is equally difficult to prove the same. It is so said because a plea of fraud is to be proved like a criminal charge. However, since in the case in hand, appellant-plaintiff took the plea of fraud in a casual manner and did not make even a sincere effort to prove the said plea of fraud by leading relevant and cogent evidence in this regard, he was bound to fail. That is what has been held by both the learned courts below. Under these circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing their impugned judgments and decrees and the same deserve to be upheld, for this reason also. This view taken by this court also finds support from the judgments of the Hon'ble Supreme Court and judgments of this court in ***Gautam Sarup vs. Leela Jetly and others*, 2008(7) SCC 85, Santa Singh vs. Tarsem Singh, 2010(67) RCR (Civil) 520, Devi Lal vs. Shekaran and another, 2011(5) RCR (Civil) 615, Usha and others vs. Subhash Chander and others, 2014 (5) RCR (Civil) 813, M/s Machhi Ram Kishan Singh Sidana, Rice Mills vs. Sham Singh and others, 2015(9) RCR (Civil) 506, RSA No.4070 of 2016 (Chamkur Singh and another vs. Raghbir Singh and another) decided on 13.1.2017, RSA No.1239 of 2016 (Satbir Singh vs. Mukesh Rani and others) decided on 17.1.2017, State Bank of India vs. Ghamandi Ram (dead) by his legal representatives Gurbux Rai, 1969 AIR (SC) 1330, Surjit Lal Chhabda vs. Commissioner of Income-tax, Bombay 1976 AIR (SC) 109, Surjit Singh and others vs. Gurmit Singh and others, 2010(3) PLR 122 (P&H), Hawa Singh vs. Daya Nand and others, 2010(21) RCR**

(Civil) 918, Gurmail Singh vs. Rajbir Singgh and another, 2014 (4) RCR (Civil) 397 and Jagdev Singh and another vs. Major Singh and others, 2014(82) RCR (Civil) 214. Thus, the plea of fraud and forgery has been rightly rejected by the courts below.

14. In view of the above, this court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellant-plaintiff, which has no merit.

15. Dismissed.

January 21, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No