

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

RSA No.268 of 2019 (O&M)

Date of Decision.27.11.2019

Jarnail Singh

...Appellant

Vs

Rupinder Kaur

...Respondent

Present: Mr. Kapil Khanna, Advocate
for the appellant.

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

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JAISHREE THAKUR J. (ORAL)

1. This regular second appeal is preferred by the appellant-plaintiff against the judgments and decrees of both the Courts below whereby the suit filed by the appellant for declaration to the effect that the sale deed dated 28.12.2010 in respect of land measuring 8 kanals being 1/3rd share of 24 kanals situated in village Mohindpur, Tehsil Balachaur, District Shaheed Bhagat Singh Nagar is illegal, forged and fabricated document with consequential relief of permanent injunction, has been dismissed.

2. In short the facts as stated are that the appellant-plaintiff (hereinafter referred to as appellant), being owner in possession of suit land agreed to sell the same to the respondent-defendant (hereinafter referred to as respondent) for a sum of ₹10,56,000/- and for the said purpose, sale deed dated 28.12.2010 was scribed. At that time, husband of the respondent, Bhupinder Singh told the appellant that he would make payment of entire sale consideration to him after registration of the sale deed. The appellant believed his words and executed the sale deed in favour of the respondent, however, when he demanded the sale consideration of ₹10,56,000/-, the

respondent and her husband assured that the payment would be made in installments along with interest @12% per annum. In the end of January, 2011, respondent paid ₹10,000/- to be treated as interest of the sale consideration. On 13.02.2011, respondent refused to pay the money and stated that they have already got written in the sale deed that the consideration has been paid to the appellant prior to execution and registration of the sale deed. The appellant was told that payment of entire sale consideration would be made to him at home and that was so scribed in the sale deed but the respondent and her husband in connivance with scribe and witnesses got written in the sale deed that the appellant has already received the sale consideration at home. On the basis of alleged sale deed, mutation was got sanctioned and revenue entries were made in favour of the respondent. The respondent started threatening appellant to dispossess him from the suit land. It is in this backdrop, the suit has been filed for setting aside the sale deed being illegal, null and void, forged and fabricated and a result of fraud with consequential relief of permanent injunction.

3. The respondent appeared and contested the suit by raising preliminary objections qua cause of action, estoppels, locus standi, maintainability and suppression of true and material facts. On merit, it was stated that suit land was sold by the appellant for a sale consideration of ₹10,56,000/- vide sale deed dated 28.12.2010 and the respondent had been put in actual and physical possession. The sale deed was duly witnessed by Lambardars of the village namely Gurdev Singh and Harbhajan Singh. The scribe typed the sale deed at the instance of appellant, which was read over to the appellant and after admitting the same to be correct, signed in presence of the attesting witnesses whereas husband of the respondent

signed the same as her representative. Thereafter, the sale deed was presented before the Sub Registrar, Balachaur for registration, who also read over the same to the appellant. The appellant also moved applications to SHO, P.S. Balachaur and SSP, SBS Nagar, who marked inquiry to the Incharge Economic Offence Wing and after detailed inquiry, it was held that appellant has received the entire sale consideration from respondent and her husband, thus, prayed for dismissal of the suit.

4. On the basis of pleadings, the trial Court framed the issues. Parties led their respective evidence and on appreciation of the evidence, the trial Court dismissed the suit and so did the lower Appellate Court.

5. Learned counsel appearing on behalf of the appellant submits that the Courts below did not appreciate the statement of Gurdev Singh, one of the attesting witnesses, who stated that no consideration was paid to the appellant. Similar was statement of DW1 Sarwan Singh. Though the respondent filed the written statement but did not step into the witness box to prove her case. It is settled law that sale deed without consideration is *non est* in the eyes of law, thus, urges this Court for setting the sale deed.

6. I have heard learned counsel for the appellant and have gone through paper book. The only issue to be considered by this Court is whether the sale consideration of ₹10,56,000/- was received by the appellant-appellant as written in the sale deed or not and whether the sale deed is an outcome of fraud played upon the appellant.

7. No prudent man would sell the land without receiving entire sale consideration before or at the time of registration of sale deed. The content of sale deed was read over to the appellant and after admitting the same to be correct, he signed the same in the presence of attesting

witnesses. Even the Sub Registrar before registering the sale deed, read over the same to the appellant. DW1 Sarwan Singh, deed writer proved the sale deed dated 28.12.2010 as Ex.D1 and the entry made in his register as Ex.D2 and so did the marginal witness Harbhajan Singh, who deposed as DW4. Admittedly, the appellant lodged a complaint with the police with regard to alleged fraud committed upon him by the respondent and after due enquiry, the allegations levelled by the appellant were found false. Meaning thereby, appellant had not been able to prove that the sale deed was without consideration and he did not receive any sale consideration in lieu of sale deed dated 28.12.2010. The appellant has not been able to rebut the evidence led by the respondent with regard to execution and registration of sale deed.

8. Even otherwise, general allegations of fraud are insufficient. In suits filed on the basis of fraud, the allegation of fraud must be clear, definite and specific. General allegation of fraud, however, strong the words in which they are stated may be, if unaccompanied by particulars, are insufficient to amount to an averment of fraud which any Court ought to take notice. The appellant has not been able to prove fraud as per provisions of Order 6 Rule 4 CPC.

9. As an upshot of my finding, I do not find any illegality and perversity in the judgments and decrees rendered by both the Courts below, which are based upon correct appreciation of facts and law. No ground for interference is made out. Dismissed.

(JAISHREE THAKUR)
JUDGE

November 27, 2019

Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No