

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

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RSA-173-2020 (O&M)

DATE OF DECISION: 05.02.2020

SURINDER KAUR

... Appellant (s)

Versus

RAJWINDER KAUR @ BALJINDER KAUR

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Ms. Kanwal S. Walia, Advocate for the appellant(s).

ANUPINDER SINGH GREWAL, J. (ORAL)

CM-444-C-2020

This is an application for condonation of delay of 16 days in preferring the appeal.

For the reasons stated in the application, the same is allowed and delay of 16 days in preferring the appeal is condoned.

MAIN CASE

The appellant-plaintiff has challenged the judgments of the courts below whereby the suit preferred by the appellant-plaintiff for declaration that the sale deed dated 23.08.2011 is illegal, unlawful and bogus document, has been executed without consideration has been dismissed.

Learned counsel contends that the appellant-plaintiff is an illiterate lady and undue influence had been exerted upon her for executing the sale deed. The consideration had not been paid to her and the matter had, later on, been compromised with the respondent-defendant who had resiled therefrom. The consideration amount was received by Dalbir Singh. She has relied upon the judgments of the

Division Bench of the Calcutta High Court in the case of Sachal Ghosh and others Vs. Khokan Ghosh, S.A.T. No.9 of 2015 (CAN 324 of 2015), decided on 10.08.2015 and Allahabad High Court in the case of Smt. Rolli Singh and another Vs. Ram Chandra and another, Second Appeal No.845 of 2017, decided on 09.08.2017.

Heard.

It was stated by the appellant-plaintiff that she is joint owner in possession of the suit property and has never intended to alienate her property but she was brought to the office of the Sub Registrar by Anant Singh, Amar Singh, Dalvir Singh and Ranjit Singh and on the pretext of filling up her old age pension papers, they had pressurized her to execute sale deed in respect of land measuring 10 marlas in favour of defendant-Rajwinder Kaur, who is the daughter-in-law of Anant Singh.

It is borne out from the material on record that the sale deed had been executed before the Sub Registrar. In the sale deed itself, it was mentioned that consideration had already been paid to the plaintiff. No cogent evidence had been led by the plaintiff in support of the plaint that the sale deed has been executed by exerting undue influence. Needless to state that the onus, in this regard, lay upon the plaintiff but she could not discharge the same. With regard to the compromise, which is stated to have been entered by the plaintiff with the defendant, it is to be noticed that in terms of the compromise, the plaintiff had to pay a sum of Rs.3.2 lakh. PW-4 Surjit Singh, in his cross-examination, had stated that the plaintiff did not pay the sum of Rs.3.2 lakh with regard to the

compromise dated 01.12.2014. PW-3 Mohinder Kaur, who was also a witness to the compromise, stated that the plaintiff did not pay any amount with regard to the compromise to the respondent. After the sale deed had been executed by the plaintiff in favour of respondent-defendant Rajwinder Kaur, mutation No.4975 had also been sanctioned. This is reflected in the jamabandi for the year 2009-2010 Ex.P-3.

The judgments relied upon by the learned counsel for the appellant are distinguishable on facts. In the case of Sachal Ghosh and others Vs. Khokan Ghosh (supra), it was held that as the relationship between the parties was fiduciary, therefore, the plaintiff had been taken advantage of by the defendants in executing the sale deed and in such circumstances, it was incumbent upon the defendants to lead evidence in support of the sale deed having been executed without any undue influence or fraud. In the instant case, there is nothing on record which would suggest that the plaintiff and the defendant were in a fiduciary relationship.

In the case of Smt. Rolli Singh and another Vs. Ram Chandra and another (supra), it was held that positive evidence had been led with regard to the consideration. In the instant case, the payment of the consideration was reflected in the sale deed itself which has been executed before the Sub Registrar. Even in the compromise, which the appellant-plaintiff is relying upon, it was mentioned that the consideration had been paid by the respondent-defendant to the appellant-plaintiff which she was required to refund.

Consequently, I do not find any manifest illegality in the orders of the Courts below. The findings of fact, which had been relied upon, do not call for any interference in second appeal. The appeal stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

05.02.2020.

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