

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

Date of decision: 14.1.2020

1.

RSA No.2230 of 2011(O&M)

Sarabjeet Singh

.....Appellant

VERSUS

Satinder Kaur and others

.....Respondents

2.

RSA No.989 of 2017(O&M)

Sarabjit Singh

.....Appellant

VERSUS

Sadhu Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Mr. Rajinder Goyal, Advocate for the respondents.

REKHA MITTAL, J.

This order will dispose of RSA Nos.2230 of 2011 and 989 of 2017 as decision of RSA No.2230 of 2011 would have strong bearing on decision in the other appeal. For facility of reference, facts are taken from RSA No.2230 of 2011.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit of the appellant/plaintiff claiming 1/3rd share in house in question by challenging sale deed dated 04.11.2004 executed by Jaswant Kaur, mother of the

parties was dismissed but relief of permanent injunction was allowed restraining the respondents/defendants from interfering in peaceful possession of the plaintiff in the property in dispute including two rooms, bathroom, lavatory, kitchen, verandah, one shop and open space shown green in the site plan Ex.P1/1.

The appellant/plaintiff challenged the sale deed primarily on the ground that since 1998 to 10.01.2005, Jaswant Kaur was in custody of the plaintiff but on 03.11.2004, he and his family went for three days to attend some family function. He requested his brothers to take care of mother in his absence. On 04.11.2004, the respondents/defendants got executed the sale deed from Jaswant Kaur forcibly, fraudulently and by threatening her with dire consequences of which he gained knowledge in April 2005 when defendants demanded from plaintiff to vacate the portion in his possession.

Counsel for the appellant would argue that findings recorded by the Courts negating plea of the appellant in respect of his ownership in possession of 1/3rd share in the suit house are the result of mis-appreciation of evidence and ignoring vital materials on record. It is further argued that as per the sale deed, sale consideration was Rs.47,500/- but value of the suit house was much more than purportedly paid by the respondents/defendants, sufficient to establish that sale deed in question is the result of misrepresentation and fraud, thus, liable to be set aside.

Counsel representing the respondents, on the contrary, has supported concurrent factual findings with the submission that the same do not suffer from error much less perversity nor raise a question of law that needs determination in second appeal. It is vehemently argued that as the

appellant sought to get the sale deed dated 04.11.2004 set aside by raising allegations of fraud, he was required to prove those allegations akin to a criminal charge but failed to adduce sufficient much less cogent and convincing evidence to support his plea. It is further argued that mere fact that sale consideration was Rs.47,500/- itself is not a ground for setting aside the sale deed particularly in the circumstances that the same was never challenged by its executant during her lifetime.

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

Counsel for the appellant has failed to advance any meaningful/convincing arguments to assail concurrent findings recorded by the Courts negating his plea on the basis whereof he had challenged the sale deed dated 04.11.2004 executed by Jaswant Kaur, mother of the parties in favour of her two sons namely Amarjit Singh and Sadhu Singh. As has been rightly argued by counsel for the respondents, once a party has sought to assail any deed on the ground of fraud, he has to plead essential ingredients constituting fraud and prove the same like a criminal charge. The appellant failed to establish his plea that sale deed executed by Jaswant Kaur is liable to be set aside on any score whatever. That being so, contention of the appellant that he is owner of the suit house to the extent of 1/3rd share is patently misconceived and has rightly been rejected by the Courts. In this view of the matter, I do not find an error much less perversity in the judgments impugned.

In view of what has been discussed hereinbefore, finding no merit, the appeal is dismissed.

RSA No.989 of 2017 has been filed by the appellant to assail findings of the Courts whereby suit filed by Sadhu Singh and legal heirs of Amarjit Singh for possession of portion of suit house consisting of two rooms, bathroom, lavatory, kitchen, verandah, one shop etc. shown red in site plan attached with the plaint was decreed by the Courts. Since claim of the appellant being co-owner in the suit house to the extent of 1/3rd share has been rejected in view of decision in RSA No.2230 of 2011, he cannot retain possession of the aforesaid portion until so permitted by the true owners.

Counsel for the appellant after coming to know of decision in RSA No.2230 of 2011 would pray that the appellant may be given time to hand over vacant possession of the portion in his possession to respondents/decreed holders.

Counsel for the respondents/decreed holders has got no objection if the appellant is permitted to hand over vacant possession of the aforesaid premises within reasonable time.

In view of the above, the appellant is allowed six months' time to hand over vacant possession of the portion of the suit house in his possession to respondents/decreed holders subject, however, to the following conditions:-

1. The appellant shall furnish an undertaking before the trial Court within a period of one month that he will hand over vacant possession of the portion of suit house in his possession to respondents/decreed holders on or before 14.07.2020.

2. He will not create any third party interest qua the portion in his possession.

In case of non-furnishing of undertaking within the stipulated period, the respondents shall be entitle to execute the decree forthwith. All other miscellaneous applications stand disposed of. No order as to costs.

JANUARY 14, 2020

‘D. Gulati’

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no