

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

RSA No.1647 of 2020 (O&M)

Date of decision: 15.12.2020

Anoop Singh and another

.....Appellants

Versus

Subhash Chander and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Satbir Singh Gill, Advocate,
for the appellants.

Ritu Bahri, J.

CM No.5470-C of 2020

For the reasons mentioned in the application, same is allowed and delay of 92 days in refiling of the appeal is condoned.

RSA No.1647 of 2020 (O&M)

This appeal has been filed against the judgment dated 05.07.2019 passed by the Additional District Judge, Sirsa, dismissing an appeal filed by plaintiff-appellants against the judgment and decree dated 28.01.2015 passed by the Civil Judge (Senior Division), Sirsa, whereby suit filed by them (plaintiffs) for declaration, has been dismissed.

Anoop Singh etc.-plaintiffs (appellants herein) (hereinafter referred to as 'the plaintiffs') filed a suit for declaration to the effect that earlier the suit land was owned and possessed by defendant Nos. 3 to 13 and they had agreed to sell the same in favour of the plaintiffs vide agreement dated 17.09.2007 at the rate of Rs.2,90,000/- per acre and received Rs.6,00,000/- as earnest money from the plaintiffs. Stipulated date for execution and registration of the sale deed was fixed as 03.03.2008. It is

further stated that after payment of sale consideration, possession of the suit

land was handed over to the plaintiffs and since then, they are owners in possession of the suit land. As per plaintiffs, they used to sell their agriculture produce through defendant No.1 for the last so many years and used to take loan in advance from him from time to time. On 03.03.2008, in good faith, plaintiffs took defendant No.1 along with them for execution and registration of the sale deed in their favour before the Sub Registrar, Nathusari Chopta, where plaintiffs paid entire sale consideration of Rs.21,09,000/- to defendant Nos.3 to 13 (as Rs.6,00,000/- had already been paid by them as earnest money). It was further stated that the plaintiffs were illiterate and at the time of execution and registration of sale deed, defendant No.1 had asked plaintiff-Anoop Singh to sign on some documents. At that time, sellers had also put their signatures on those documents. It was assured by defendant No.1 that the sale deed had been executed and registered in favour of plaintiffs and a receipt in original, was also handed over by defendant No.1 being issued by the office of Sub Registrar, Nathusari Chopta. Thereafter, defendant No.1 asked the plaintiffs to return back because the sale deed had been got registered accordingly before the Sub Registrar. Believing the assurance of defendant No.1, plaintiffs returned back to their houses along with defendant No.1. Later on, in the second week of May, 2008, plaintiffs came to know that the sale deed had been got obtained fraudulently in the name of defendant Nos.1 and 2, thereby, they have committed a serious fraud and forgery. In this regard, plaintiffs made an application against defendant Nos. 1 and 2 for committing fraud with them, but no action was taken thereon by the competent authority. Ultimately, plaintiffs filed a complaint against defendant Nos.1 and 2, which was sent to the Police Station under Section

156 (3) Cr.P.C.. Thereafter, FIR No.145 dated 25.09.2008, under Sections 420/467/468/471/506/120-B IPC was registered against defendant Nos.1 and 2 at Police Station, Nathusari Chopta. Hence, the plaintiffs filed the instant suit for declaration to the effect that the impugned sale deed and subsequent revenue records, if any, entered and sanctioned on the basis of said sale deed, were wrong, incorrect, against law and facts, null and void and not binding on the valuable rights of the plaintiffs and were liable to be set aside.

Upon notice, defendant Nos. 1 and 2 (respondents) filed written statement taking preliminary objections with regard to the cause of action, concealment of facts and the suit being barred under Order 23 CPC and Section 11 CPC. On merits, it was stated that defendant Nos. 1 and 2 had purchased the suit land vide registered sale deed dated 03.03.2008 on payment of full and final consideration to the remaining defendants and possession of the suit land was delivered to them at the time of registration of the sale deed. Neither defendant No.1 was a commission agent of the plaintiffs nor he was asked to accompany for registration of the sale deed, as alleged. As per defendants, plaintiffs were not present on 03.03.2008 before the Sub Registrar. Procuring of signatures of the plaintiffs on stamp papers and other papers was denied. It was further denied that defendant Nos.1 and 2 had committed any fraud or forgery upon the plaintiffs. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

Defendant Nos.3 to 13 also filed written statement taking preliminary objections with regard to maintainability, cause of action etc.

They denied the averments made in the plaint and prayed for dismissal of

the suit.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiffs are entitled to the relief of declaration with consequential relief of permanent injunction as prayed for? OPP
2. Whether suit of plaintiffs is not maintainable in the present form? OPD
3. Whether plaintiffs have no cause of action and locus standi to file the present suit? OPD
4. Whether the plaintiffs have not come to the Court with clean hands and have concealed the true and material facts from the Court? OPD
5. Whether suit of the plaintiffs is bad for want of proper court fee? OPP
6. Whether suit of the plaintiffs is under valued for the purpose of court fee? OPD
7. Relief.

Trial Court, after hearing learned counsel for the parties, dismissed the suit. Appeal against the said judgment also met the same fate.

Both the Courts have given a concurrent finding of fact and held that defendants have placed on record copy of Jamabandi for the year 2012-2013 as Ex.D2, copy of mutation No.1862 Ex.D3, as per which, Subhash Chander and Kanta i.e. defendant Nos.1 and 2 have been shown to be owners in possession of the suit property. Girdawari Ex.DE did not show the possession of present plaintiffs. Further, in the sale deed Ex.D1, there was recital of delivery of possession in favour of defendant Nos. 1 and 2. Both the Courts have gone through the judgment and decree dated 23.01.2014 Ex.P9 and P10, relied upon by the plaintiffs and held that the

said judgment and decree was regarding land measuring 60 Kanals 09

Marlas and sale deeds were bearing Nos.6344, 6345 and 6346 and subsequent sale deed Nos.12445 and 12446 were under challenge. Anoop Singh-plaintiff had admitted, in his cross-examination with regard to necessity of signature of the vendor, vendee and clicking of their photographs at the time of registration of the sale deed. He clarified himself that the photos were taken by the computer operator and further, photos of the witnesses were also taken. Hence, plaintiffs had good knowledge about the procedure adopted at the stage of registration of sale deed. In his affidavit Ex.PW1/A, Joga Singh (PW-1) had self contradicted himself that he did not get it mentioned in his affidavit that they returned to house with original receipt of sale deed. Dilbagh Singh (PW-2), admittedly, was not the eye witness. Bali Mohammad (PW-4), in his cross-examination, stated that no payment was made in the presence of Sub Registrar by them. Likewise, PW-5 deposed against the contents of sale deed in question with regard to payment. Hence, entire case of plaintiffs has been rejected.

Another plea taken by the plaintiffs that they are illiterate agriculturists, has been rejected by the lower appellate Court by observing that the agriculturists are accustomed to revenue work and land affairs, therefore, despite their illiteracy, they possess very good knowledge regarding alienation of the land. It was admitted by the plaintiffs that they were indulging in several other civil and criminal litigations. Hence, they were held the men of business having legal knowledge. Sale deed Ex.P3 (Ex.D1) was drafted by Yogesh Sharma, Advocate and it was presented for registration in the office of Sub Registrar by Mani Ram, respondent-defendant No.3. It was registered in the presence of all vendors and witnessed by Sh. Ram Lal, Numberdar, Prem Kumar Saini and Bali

Mohamad. In the sale deed, it was mentioned that Rs.9,36,000/- were paid in the presence of Sub Registrar by vendee to the vendors. The vendors have admitted in the written statement that the sale deed was executed and got registered by them in favour of defendant-respondent Nos.1 and 2 on the asking of plaintiff-appellants. Plaintiffs did not raise any objection for several months after registration of the sale deed in favour of defendant Nos. 1 and 2 and they filed this suit after a lapse of two years despite having full knowledge of the same.

The sale deed Ex.D1 was executed and registered in the presence of plaintiffs and before the Court, they have not been able to lead any evidence with regard to the fraud committed upon them. The plea of fraud has to be established beyond reasonable doubt. In this backdrop, findings on issue Nos. 1 and 2 have rightly been given against the plaintiffs.

After going through the impugned judgments, it is apparent that the appellants have not been able to show any evidence, which has not been examined by both the Courts below while dismissing their suit. In view of the said fact, suit filed by the plaintiffs (appellants) has been rightly dismissed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgment warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed.

15.12.2020
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No