

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

RSA No.478 of 2018 (O&M)
DATE OF DECISION : 27th FEBRUARY, 2020

Joginder Singh

.... Appellant

Versus

Kashmiro Bai and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mr. Suresh Kumar Aneja, Advocate for the appellant.

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RAJBIR SEHRAWAT, J. (Oral)

1. This is the second appeal filed by defendant No.3 in the original suit, challenging the concurrent findings, judgments and decrees passed by both the courts below, qua him.
2. For the convenience, the parties are being referred to herein as the plaintiffs and the defendants; as they were described in the original suit.
3. The brief facts, giving rise to the present appeal, are that the wife and the son of the present appellant/defendant No.3 in the original suit, had filed a suit for fixation and recovery of maintenance at the rate of ₹36,000/- per annum and for creating a charge on the immovable property, which was stated to be 1/3rd share of the land measuring 130 Kanal 9 Marla, as mentioned in the plaint. It was pleaded in the suit that plaintiff No.2 is the minor son and the plaintiff No.1 is wife of the appellant/defendant No.3. They were unable to maintain themselves. It

was pleaded in the suit that defendant No.3/appellant, being a person of bad habits, had given beatings to the plaintiffs 8/10 years ago and had turned them out from the home. Since then they are neglected and the appellant/defendant No.3 had failed to maintain them. The plaintiff No.1 and her parents tried their best to prevail upon the appellant/defendant No.3 to maintain the plaintiffs, however, he was never ready and willing to perform his obligation. Thereafter, the appellant/defendant No.3 started proclaiming that he had already sold 26 Kanal 4 Marla of the land and will sell the remaining properties also, so that the plaintiffs are not able to claim any maintenance or share from him. It transpired that the sale deed No.2837 dated 04.10.2005 was got registered by defendant No.3 in favour of defendants No.1 and 2, so as to frustrate the maintenance rights of the plaintiffs. The defendant No.3 was asked by the plaintiffs to pay the maintenance. However, he had refused it. Therefore, a declaration was also sought that the sale deed in favour of defendants No.1 and 2 was null and void and not binding upon the rights of the plaintiffs, and that the maintenance would be the first charge upon the properties owned by defendant No.3.

4. On notice, the defendants contested their claims. Initially, the appellant/defendant No.3 had appeared through counsel and filed his written statement, however, later on none appeared on his behalf and consequently the trial court proceeded *ex parte* against him. The defendants No.1 and 2 had taken plea of *bona fide* purchasers for consideration. Hence, they prayed that the suit, challenging the sale deed in their favour, be dismissed. It was further submitted that the

plaintiffs have filed suit in collusion and in connivance with defendant No.3.

5. To prove their respective claims, the parties led their respective evidence. After considering the evidence of the parties, the trial court decreed the suit. Through the decree, the trial court held the plaintiffs entitled to maintenance allowance to the tune of ₹36,000/- per annum, as prayed for by them in the suit; from the date of filing of the suit. Still further, sale deed executed by defendant No.3 in favour of defendants No.1 and 2, was declared as null and void, being without consideration and not for good management of the family. Accordingly, it was ordered that the claim of maintenance of the plaintiffs would be the first charge over the property owned by the defendant No.3. Aggrieved against the said judgment and decree, the defendants No.1 and 2 preferred the appeal before the lower appellate court. However, the present appellant/defendant No.3 had not preferred any appeal against the judgment and decree passed by the trial court. After hearing the parties, lower appellate court reversed the judgment and decree passed by the trial court to the extent the sale deed in favour of the defendants No.1 and 2 being declared null and void. Hence, it was held that sale deed in favour of defendant No.1 and 2 was valid. Still further, it was held by the lower appellate court that since despite the sale of part of property by defendant No.3 in favour of defendants No.1 and 2, the defendant No.3 was still left with sufficient properties to meet the maintenance of the plaintiffs, therefore, the maintenance amount of the plaintiffs shall be the first charge upon property, which was still left with the defendant No.3/appellant, after excluding the property sold to defendants No.1 and

2. It is against this judgment and decree passed by the lower appellate court that the present appeal has been filed by defendant No.3.

6. Arguing the case, learned counsel for the appellant has submitted that the plaintiffs were already granted maintenance in the proceedings initiated by them under Section 125 Cr.P.C. The order to that effect was placed on record by the defendant No.3 as Exhibit D-1. However, the said order has not been taken into consideration by the courts below. Still further, it is submitted that the lower appellate court has wrongly set aside the decree passed by the trial court to the extent of setting aside the sale in favour of the defendants No.1 and 2. It is further submitted that the trial court had rightly set aside the sale deed executed by the present appellant/defendant No.3, in favour of the defendants No.1 and 2; because the same was fraudulent and without consideration.

7. Having heard the learned counsel for the appellant, this court does not find any substance in the argument raised by the counsel for the appellant. So far as the argument of the learned counsel for the appellant qua adjustment of the maintenance amount awarded in some other proceedings, is concerned, appellant/defendant No.3 has not placed on record anything to show that he was paying any amount even pursuant to the earlier order, which is being referred to by him as Exhibit D-1. Therefore, this court does not find any irregularity in judgment and decree passed by the courts below in creating first charge over the property owned by defendant No.3 for recovery of the maintenance amount. So far as the adjustment is concerned, the statutory provisions are already there to take care of the situation, which the petitioner is

trying to rake up in the present appeal. However, that aspect is not even the subject matter of the present appeal at all.

8. So far as the second argument; qua the invalidity of the sale in favour of defendants No.1 and 2 is concerned, this court finds that this argument is only manifestation of cleverness on the part of defendant No.3/appellant. He himself had executed the said sale deed in favour of defendants No.1 and 2. He has never filed any suit, challenging the said sale deeds as such. Not only this, in the present case also; this plea is being taken by the defendant No.3/appellant in the second appeal, which by no means, can be permitted by this court. Hence, this court does not find any substance in this argument of the counsel for the appellant, as well.

9. No other argument was raised. No substantial question of law has been pointed out by the counsel for the appellant before this court.

10. In view of the above, finding no merit in the present appeal, the same is dismissed.

27th FEBRUARY, 2020
'raj'

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>