

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

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RSA No.299 of 2018 (O&M)
DATE OF DECISION : 16th FEBRUARY, 2021

Jeewan Singh (Deceased) through LRs

.... Appellant

Versus

Rajbir Kaur and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court
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Present: Mr. M. S. Kang, Advocate for the appellant.

Mr. Prateek Gupta, Advocate for the respondents.

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RAJBIR SEHRAWAT, J. (Oral)

1. This is an appeal filed by one of the sons of the original plaintiff-Jeewan Singh, who had filed a suit seeking declaration as owner in possession of the properties along with prayer for issuance of permanent injunction, challenging the concurrent judgments and decrees passed by the courts below.

2. The facts, as can be culled out from the judgment of the lower appellate court are that the plaintiff-Jeewan Singh was having two sons namely Karanjit Singh and Ujjagar Singh. Karanjit Singh was residing in United States of America (USA) since long time. Earlier Jeewan Singh was also working in East Africa. However, he had returned to India. The other son Ujjagar Singh-respondent No.2 herein, was residing in India and was serving in Oil & Natural Gas Corporation

Limited (ONGC). The plaintiff being of old age was being looked after by his son Ujjagar Singh. Three properties namely one house at Mohali and two plots at Massoorie were purchased in the name of Rajbir Kaur who is the wife of his son Ujjagar Singh. Subsequently, the relations between the plaintiff-father and the son Ujjagar Singh became sour. As a result, the plaintiff filed suit claiming that the above mentioned properties were purchased with the money paid by him. The defendants, the son of the plaintiff i.e. Ujjagar Singh and the daughter-in-law had assured the plaintiff that the property would be purchased in his name. However by playing a fraud, they purchased the properties in the name of Rajbir Kaur. The plaintiff came to know of this fact only in the year 1996. Hence, the present suit was filed by him.

3. The suit was contested by the defendants asserting that since the plaintiff had come back from East Africa and he was mostly dependant upon the defendants for support, therefore, defendant No.2- Ujjagar Singh had even left his lucrative job to serve his father. It is only out of love and affection that the plaintiff-father contributed part of the funds towards the purchase of the house situated at Mohali. The other two plots were purchased by defendants themselves. The suit has been filed only at the instance of other son Karanjit Singh who is residing in USA. Hence, the suit deserves to be dismissed.

4. The plaintiff examined himself in evidence. Besides this, the plaintiff also examined two commission agents of market committee and one official from the Bank. The official from the Bank proved the factum of transfer of some of the funds in the accounts of the daughter-in-law, as well as, the payment of some of the money directly to the

vendor of the house at Mohali. The said commission agents, although examined in the examination-in-chief, however, did not turn up for cross-examination. To rebut the case of the plaintiff, the defendants themselves presented as witnesses before the court. Besides this, the defendants also examined DW-1-Jarnail Singh who was the common acquaintance of the parties. The defendants also examined some other witnesses to contest the claim of the plaintiff and to substantiate their own case.

5. After hearing the parties and perusing the evidence on file, the trial court dismissed the suit filed by the plaintiff. However, during the pendency of the suit the original plaintiff-Jeewan Singh had expired, therefore, the other son Karanjit Singh filed the appeal challenging the judgment and decree passed by the trial court as legal heir of the original plaintiff. However, that appeal has also been dismissed by the lower appellate court. It is against that judgment and decree the present appeal has been preferred by one of the son Karanjit Singh as legal representative of original plaintiff-Jeewan Singh. Although, the defendant No.2-Ujjagar Singh also happens to be a legal representative of the deceased plaintiff, therefore, he had contested the locus of the appellant to claim as sole legal representative of the deceased-plaintiff. However, this court had directed the appellant to represent the plaintiff solely for the purpose of prosecution of the proceedings of the appeal.

6. While arguing the case, the counsel for the appellant has submitted that since it has been held by the trial court that sale consideration for purchase of the properties situated at Mohali had come from the account of the plaintiff directly, therefore, the court has

committed a legal error in dismissing the suit filed by the plaintiff. To the same effect is the error committed by the lower appellate court. Once, it has been proved that the money for purchase of the property had come from the account of the plaintiff and was paid directly to the vendor of the property, then the fact that the plaintiff intended to purchase the property in his name stands duly proved. It is further submitted that the plea of the defendants qua love and affection stands rebutted by the fact that the plaintiff-father himself had been in litigation with them by way of the present suit, as well as, earlier by way of some complaint to the authorities. Therefore, the judgments and decrees deserve to be reversed and the suit of the plaintiff deserves to be allowed.

7. On the other hand, the counsel for the respondents has submitted that both the courts below have rightly dismissed the suit and the appeal filed by the plaintiff/appellant. It has come on record that the father had contributed some money qua purchase of the properties in the name of defendant No.1 out of love and affection and as a measure to compensate the son Ujjagar Singh, who had left his lucrative job to take care of his aged and ailing father. It is further submitted that the entire money qua the house at Mohali was not paid by the father. It is only part of the sale consideration which was paid by the father. Rest of the consideration was paid by Ujjagar Singh and his wife only. It is further submitted that there is no evidence on file to prove any fraud on the part of the defendants. Hence, the present appeal deserves to be dismissed.

8. Having heard the counsel for the parties and having perused the case file, this court does not find any substance in the appeal. It is not disputed that the father had come back from East Africa and has started

residing in Punjab. The present appellant was not even residing in India at the relevant time. Therefore, by any means, it is the other son, the defendant No.2-Ujjagar Singh, who was in contact of the father at the relevant time. It has come on record by way of positive evidence, as well as, by admission of the plaintiff himself that the defendants used to take care of the plaintiff and his wife. It has also come on record that it was for the sake and on the asking of the plaintiff that defendant No.2 had left his job. Therefore, there is no reason or evidence available on record to show that there was any ill-will or the relation between the plaintiff and the defendant was sour at the relevant time. Although, it has been submitted that there were certain complaints made by the plaintiff-father against the defendants, however, no such complaint forms part of the record in any manner.

9. Although, it is not even disputed that part of the sale consideration qua the house at Mohali was paid by the plaintiff directly to the vendor of the said house; and also; some money was transferred by the plaintiff in the account of defendant No.1 at other time, however, this itself does not show that the plaintiff intended to purchase the property in his own name; and not in the name of the daughter-in-law or in the name of Ujjagar Singh. So far as the other two properties are concerned, there is not even any evidence that the plaintiff made any payment for purchase of the said properties. Although, the evidence led by the plaintiff shows that some amount was transferred by him in the account of defendant No.2, however, it is nowhere in evidence to establish that the said amount was transferred in the account of defendant No.2 only for purchase of the said properties. Hence by any evidence, the plaintiff is not even remotely

connected with the purchase of those properties. The courts below have rightly recorded the fact that the plaintiff was an educated person who happens to have worked abroad, therefore, he could not have been easily befooled nor could he had overlooked any such course of action adopted by the defendants, if any fraud had happened to him. Although, the plaintiff produced two commission agents from Market Committee to support his version that he had asked the defendants to purchase the property in his name only and not in the name of defendant No.1, however, none of those witnesses was produced before the court for facing cross-examination. Hence, the plea of fraud, asserted by the plaintiff has gone totally unsubstantiated. It is established law that once plea of fraud is taken, then the fraud has to be pleaded specifically and each element of fraud has to be duly proved by leading positive evidence qua the aspect of fraud. The plaintiff could not even relied upon any weakness of the evidence of the defendants on this aspect. It was the sole and exclusive responsibility of the plaintiff to prove fraud as such. However, as observed above, there is nothing on record even to remotely suggest the proof of the fraud involved in the matter. On the contrary, the defendants have examined the common acquaintance DW-1-Jarnail Singh, who has proved the fact that it was on asking of the plaintiff only that the defendant No.2 had left his lucrative job to take care of his father; and that it was the plaintiff only who had asked the defendant No.2 to purchase the property in his name or in the name of his wife defendant No.1. Therefore, the defendants have also led evidence to rule out any fraud on their part. Hence, this court does not find any illegality or irregularity, either in law or on facts qua findings recorded by the

courts below to hold that the plaintiff miserably failed to prove the fraud, as alleged by him.

10. No other argument was raised by counsel for the parties.
11. In view of the above, finding no merit in the present appeal, the same is dismissed.
12. The pending application(s), if any, shall stand disposed of accordingly.

16th FEBRUARY, 2021
‘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>