IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.829 of 2022 (O&M)

Date of decision: 3rd August, 2022

Jaspal Kaur & another

… Appellants

Versus

Ranbir Singh

… Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Amandeep Singh Saini, Advocate for the appellants.

MANJARI NEHRU KAUL, J.

Vide judgment and decree dated 10.07.2019, the suit filed by the plaintiff/respondent was decreed by the learned trial Court and the appeal preferred against the said decree was dismissed by the learned first appellate Court on 10.12.2021. The defendants are now in Regular Second Appeal before this Court challenging the concurrent findings of both the Courts below. The parties to the *lis* hereinafter shall be referred to by their original position in the suit.

The case of the plaintiff in brief is that he had been residing with his grand-father Ajit Singh and separately from defendant No.1 i.e. his step mother and defendant No.2 i.e. his natural father, ever since he was about 5-6 years old. His grand-father Ajit Singh was owner in possession of land measuring 2 bighas 4 biswas 4 biswasi duly detailed and described in the head-note of the plaint (hereinafter referred to as, 'the suit property'). Ajit Singh executed a Will in favour of the plaintiff, qua which mutation too was entered and sanctioned in favour of the plaintiff. Thereafter, the plaintiff became owner in possession of the suit property. The defendants with a view to grab the property of the plaintiff, conspired with each other and on the pretext of sending him to New Zealand called the plaintiff to their house. They convinced the plaintiff to give the suit property to them so that in lieu of it they would arrange money for sending him abroad. The plaintiff in good faith and being taken in by the defendants, executed sale deed dated 28.11.2013 in respect of the suit property in favour of his step-mother i.e. defendant No.1 without any sale consideration. It was followed by Mutation of the suit property being sanctioned in favour of defendant No.1. The plaintiff alleged that the defendants had thus played a fraud upon him as thereafter he was not sent abroad and rather was threatened by the defendants that they would dispose off the suit property. Left with no other choice, the plaintiff instituted a suit for declaration as well as permanent injunction against the defendants for declaring the sale deed dated 28.11.2013 and mutation No.794 dated 09.12.2013 to be illegal, null and void, with a further prayer of permanent injunction to restrain the defendants from alienating the suit property.

In the written statement, the defendants did not dispute the inter-se relationship between the parties however, they denied the allegations that they were trying to usurp the suit property. On the contrary, they alleged that the plaintiff had fallen into bad company and was under debt hence he approached the defendants to transfer the suit property in their name to avoid any adverse effect upon it. It was also submitted that in order to avoid stamp duty, the plaintiff had executed a transfer deed in favour of defendant No.1 on the basis of the documents pertaining to the suit property. It was further claimed that a payment of ₹5.00 lacs as sale consideration was also paid to the plaintiff and that the mutation thus sanctioned in the name of the defendant was legal and valid.

On the basis of the material and other evidence led, particularly the transfer deed Ex.P2, both the Courts below concurrently concluded that no evidence much less cogent had been led by the defendants qua the alleged payment of ₹ 5.00 lacs as sale consideration amount by defendant No.1 in favour of the plaintiff coupled with the fact that defendant No.2 i.e. father of the plaintiff while stepping into the witness box as DW-3, made statements to the contrary that the plaintiff had been paid a sum of ₹ 8.50 lacs by defendant No.1, which amount had been generated by selling some property. The courts below held that the oral and documentary evidence led by the plaintiff proved beyond doubt that he had been a victim of conspiracy at the hands of the defendants.

Learned counsel appearing for the appellants has vehemently argued that both the Courts below erred in holding that the transfer deed was a result of fraud and misrepresentation without any cogent evidence having been led in the said regard. He has submitted that the plaintiff was not a small child but a grown-up man of 27 years of age and hence, it could not be digested that he could have been lured or pressurized by the defendants to get the sale deed dated 28.11.2013 executed in their favour without any sale consideration. It was submitted that the marginal witnesses to the aforementioned transfer deed supported the version of the defendants, yet the courts below failed to take the same into account. A prayer was therefore made for setting aside the findings recorded by both the Courts below.

I have heard learned counsel for the appellants and perused the relevant material on record.

It is the case of the plaintiff that his grand-father Ajit Singh, with whom he had been residing, had executed a Will in his favour out of love and affection and after the death of his grand-father, the suit property had devolved upon him on the basis of the said Will. Since the defendants did not have any love lost for him, with an evil eye they lured the plaintiff to transfer the suit property in the name of his step mother i.e. defendant No.1 on the pretext of arranging money for sending the plaintiff to New Zealand. The transfer deed i.e. Ex.P2 is a crucial document around which the entire case of the parties revolves.

This Court finds merit in the observations made by the courts below that the transfer deed Ex.P2 does raise eyebrows and is indeed a suspicious document as it had been executed by a younger person i.e. the plaintiff in favour of an elderly person i.e. defendant No.1. Not only this, the categoric stand of the defendants was that the plaintiff had been paid ₹ 5.00 lacs by them in lieu of the transfer deed. However, both the signatories to the transfer deed i.e. PW-1 and PW-2 stated in unequivocal terms that no amount of money was paid to the plaintiff in their presence. Still further, defendant No.2 during his cross-examination as DW-3 deposed that an amount of money i.e. ₹ 8.50 lacs had been paid by the defendant No.1 to the plaintiff in their house. Since it was the case of the defendant No.1 that she had arranged money in the sum of ₹ 5.00 lacs by selling her land, the least that could have been done in support thereof was to produce some documents like bank account pass books, sale deed of the sold land etc. However, it is a matter of record that no evidence worth the name, was brought on record in this regard. Defendant No.1 even failed to step into the witness box to depose regarding the alleged sale consideration paid to the plaintiff by her at the time of registration of the transfer deed Ex.P2. Still further, strangely the transfer deed Ex.P2 is completely silent qua the clause of payment of money in lieu of the suit property. Hence, in the absence of any proof qua payment of sale consideration in lieu of the execution of transfer deed and it being without any love and affection, the plaintiff was successful in proving his case on the touchstone of preponderance of probabilities.

On being pointedly asked, learned counsel has failed to bring to the notice of this Court any material on record from which it could be inferred that the conclusions drawn by both the courts below were either contrary to the record or suffered from any material illegality. In the foregoing facts and circumstances of the case, this Court does not find any error in the concurrent findings recorded by both the Courts below which accordingly are upheld and the present appeal being devoid of any merit is hereby dismissed.

(MANJARI NEHRU KAUL)
JUDGE

August 3, 2022
rps

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