

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

RSA No.1445 of 2021 (O&M)
Date of decision:24.03.2022

Sharda (since deceased) through Her LRs
and others

...Appellants

Versus

Pawan Kumar Bhatia and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Lekh Raj Sharma, Advocate,
for the appellants.

ANIL KSHETARPAL, J (Oral)

The hearing of the case is being held through video conferencing on account of restricted functioning of the Courts.

Defendant No.2, 3, 4, 5 and legal heirs of defendant no.6 are in appeal qua the rights of the appellants against a concurrent findings of fact. The first appellate Court, on re-appreciation of the evidence, has partly modified the decree passed by the trial Court, however, as regards the claim of the appellants, there is a concurrent findings of fact.

Some facts are required to be noticed.

Late Sh. Budh Ram was owner of the property. The plaintiff (respondent no.1 herein) filed a suit for declaration with a consequential relief of permanent injunction claiming to be the owner in possession of the land measuring 5 kanals and 17 marlas on the strength of a sale deed

executed by late Sh. Budh Ram, on 05.05.1995. Late Sh. Budh Ram is stated to have died. Defendant no.2, 3, 4, 5 and the legal heirs of defendant no.6 are his legal representatives. Certain legal heirs have further sold some part of the land.

The defendants contested the suit alleging that late Sh. Budh Ram never executed the sale deed.

Both the Courts, on appreciation of the evidence, have found that late Sh. Budh Ram did execute the sale deed on receipt of sale consideration and got it registered on 05.05.1995. It is the case of the plaintiff that he supplied a copy of the registered sale deed to the revenue patwari, however, he failed to make an entry in the revenue record. Therefore, on the death of late Sh. Budh Ram, the property was mutated in favour of the appellants, who further transferred the property.

Fortunately, the first appellate court found that the defendants are also owners of property measuring more than 5 kanals and 17 marlas in a joint khata and therefore, the First Appellate Court held that the sale deed only to the extent of land sold in favour of the plaintiff shall be considered to be not binding on the rights of the plaintiff.

This Bench has heard the learned counsel representing the appellants at length and with his able assistance perused the paper book.

The learned counsel representing the appellants contends that the suit filed by the plaintiff suffered from unexplained delay. He further submits that since the witnesses of the sale deed have not been examined, therefore, the sale deed could not be taken into consideration. He further contends that the plaintiff has played fraud with the Court.

This court has considered the submissions, however finds no

merit therein.

The plaintiff, on purchase of the property vide registered sale deed dated 05.05.1995, became the owner of the property. The rights of the plaintiff did not get defaced merely because the mutation entry was not entered. It is well settled that the entry of mutation is only for administrative purposes. The rights in immovable property are transferred only on the execution of a registered document. Thus, there is no delay on the part of the plaintiff.

As regard the arguments of learned counsel representing the appellants to the effect that the sale deed is not proved, it may be noted that when the original sale deed Ex.P1 was admitted in evidence, the defendants did not object thereto. Moreover, the document in question is a registered document. Allegations challenging its validity were never taken before the courts below. The executant has not specified denied its execution during his life time. Hence, the plaintiff cannot be permitted to make such an assertion, for the first time, in the Regular Second Appeal.

The plaintiff has proved his case by examining himself as PW1, PW2-Dinesh Kumar (an official from the office of the Sub-registrar where the sale deed is registered) and PW3-Ashok Kumar. A presumption of correctness is attached with the sale deed.

The defendants have failed to rebut this presumption.

The last argument of the learned counsel representing the appellants also does not have any substance because the plea of fraud is required to be proved beyond any reasonable doubt. The learned counsel representing the appellants has failed to draw the attention of the Court to any substantive evidence in support of the plea of fraud.

Hence, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

March 24, 2022
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(ANIL KSHETARPAL)
JUDGE

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