

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 4777 of 2012 (O&M)

Date of Decision: 09.08.2022

Gurtej Singh

... Appellant(s)

Versus

Bachint Kaur

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. M.L.Sarin, Senior Advocate
with Mr. Ritesh Aggarwal, Advocate
for the appellant(s).

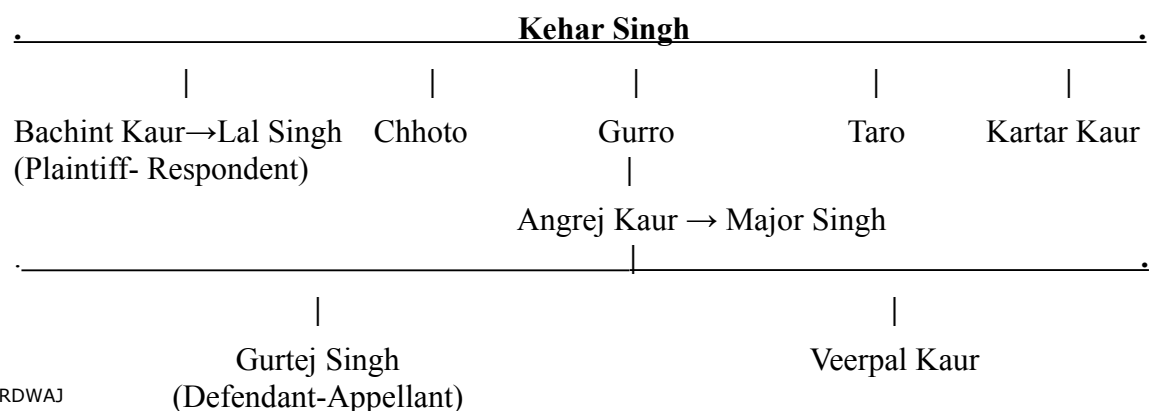
Mr. Iqbal Singh Mann, Advocate
for the respondent.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in ***Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157.***

2. While assailing the judgment and decree passed by the First Appellate Court, the defendant has filed the present appeal. The trial Court dismissed the suit filed by the respondents, whereas, the First Appellate Court has reversed the aforesaid judgment and decree.

3. The parties to this litigation are related to each other and it is considered appropriate to draw a pedigree table in order to understand the *inter se* relationship between the parties.



4. The plaintiff, Smt. Bachint Kaur is an issueless widow. She is maternal aunt of Sh.Gurtej Singh's mother. Sh.Gurtej Singh is the defendant in the suit.

5. She, after having executed a registered sale deed in favour of Sh.Gurtej Singh with respect to the land measuring 11 kanals and 2 marlas on 22.08.2007, filed a suit on 16.07.2008 seeking declaration that the aforesaid sale deed is a result of fraud and the defendant should be restrained from interfering in her possession. In substance, she claims that the defendant brought her to the office of the Registrar on the pretext that she would receive old age pension and obtained her thumb impressions on various papers. In other words, the plaintiff (respondent herein) claimed that the sale deed is a result of misrepresentation. The defendant, while contesting the suit, claimed that the property was sold to him by registered sale deed on payment of valuable consideration of ₹3,06,000/-.

6. The trial Court has culled out the following issues:

- “1. Whether the plaintiff is entitled for declaration as prayed for? OPP*
- 2. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*
- 3. Whether the present suit is not maintainable in the present form? OPD*
- 4. Whether the plaintiff has no cause of action or locus standi to file the suit? OPD*
- 5. Whether the plaintiff has not come to the court with clean hands? OPD*
- 6. Whether the plaintiff has estopped by her own act and conduct from filing the present suit? OPD*
- 7. Relief”.*

7. In evidence, the plaintiff appeared as PW.1 and produced a copy of jamabandi for the year 2003-04 (Ex.P1), a certified copy of the sale deed dated 22.08.2007 (Ex.P2) and a certified copy of the khasra girdawari

for the period Sauni-2008 (Ex.P3). The defendant not only examined both the marginal witnesses of the sale deed, namely Sh.Sukhmander Singh and Sh.Bhachar Singh as DW.1 and DW.2, respectively, but also produced its scribe, namely Sh.Surinder Singh Baghla as DW.3. Sh.Gurtej Singh (another person) son of Sh.Thana Singh appeared as DW.4. He is neighbour of Smt.Bachint Kaur, the plaintiff. The defendant-Sh.Gurtej Singh examined himself as DW.5, whereas, Sh.Davinder Kumar, Stamp Vendor, appeared as DW.6. The defendant also produced photocopy of the sale deed dated 22.08.2007 (Ex.DA) and photocopy of the pension account book of the plaintiff (Ex.D1). The relevant entry in the diary of the scribe bearing serial No. 552 dated 22.08.2007 was exhibited as DW.2, whereas, photocopy of the relevant entry in the diary of Stamp Vendor bearing serial No. 4132 was exhibited as Ex.D5. In order to prove his possession, he produced a certified copy of khasra girdawarai for the period 2008-09 as Ex.D6.

8. The trial Court dismissed the suit while recording that the plaintiff has miserably failed to prove either misrepresentation or fraud. The trial Court found that the plaintiff has failed to prove her case.

9. However, in appeal, the First Appellate Court reversed the judgment and decree passed by the trial Court on the ground that in a civil case, fraud is required to be proved on preponderance of probabilities and the sale deed is proved to have been executed without payment of any consideration. This is how this appeal has been filed.

10. Heard the learned counsel representing the parties, at length and with their able assistance, perused the judgments as well as the record of both the Courts below, which was requisitioned.

11. The learned senior counsel representing the appellant has submitted that the First Appellate Court has wrongly applied the standard of proof required for proving fraud. He submits that even in the civil cases, the standard of proof for proving fraud is beyond reasonable doubt. He relies upon the judgments passed by the Supreme Court in *Union of India vs. M/s Chaturbhai M. Patel & Co. (1976) 5 1 SCC 747: 1976 Current Law Journal 166* and *A.C.Anantha Swamy and Others v. Goraiya (Dead) by*

LRs 2004 (6) Supreme Today 317. He further contends that the First Appellate Court went into the issue of non-payment of consideration, though it was never pleaded in the plaint. He submits that in the sale deed, the payment of consideration is admitted and keeping in view the close *inter se* relationship between the parties, the chances of non-payment of sale consideration are very remote particularly when the scribe as well as the defendant, while deposing that the payment was made by the defendant and received by the plaintiff.

12. On the other hand, the learned counsel representing the respondent (plaintiff) contends that in the present case, both the marginal witnesses, namely Sh.Sukhmander Singh and Sh.Bhachar Singh have admitted that the sale consideration was not paid in their presence. Hence, he contends that in the absence of evidence of payment of sale consideration, the sale deed has correctly been set aside.

13. After having heard the learned counsel representing the parties, at length, this Court has re-appreciated the evidence. The copy of the sale deed is a part of the record as Ex.P2. This sale deed has been scribed on two pages. On both the pages, Smt.Bachint Kaur has put her right thumb impressions. A joint photograph of the vendor, vendee, both the marginal witnesses along with the Registrar has been pasted on the reverse of the first page of the sale deed. Smt. Bachint Kaur, Vendor, has also thumb marked the sale deed at the time of its registration in the presence of the Registrar. No evidence has been produced to prove that she did not execute the sale deed.

14. The plaintiff, while filing the suit, claimed that she was misrepresented as she, in good faith, trusted the defendant who brought her to the office of the Registrar on the false pretext of getting her old age pension. This assertion is factually incorrect. During her cross-examination, she admitted that she used to get old age pension, but it was stopped and she wanted to get it released. She produced a photocopy of the pension account book as Ex.D1. A bare perusal thereof proves that she was continuously receiving her pension from 1998. In fact, her passbook of the

May 2003, she was regularly operating the account in Kotli Ablu Branch of Punjab and Sind Bank. Thus, she was not a pardanashin lady.

15. In fact, she has changed her stand from what was pleaded by her in the plaint. In the plaint, she claimed that the defendant misrepresented her and she signed the alleged documents on the pretext that the defendant was helping her in receiving her old age pension, whereas, in evidence, she has admitted that she was regularly receiving the old age pension, however, it was stopped. The defendant did not produce any evidence to prove this fact.

16. The learned senior counsel representing the appellant is correct while contending that fraud is required to be proved beyond reasonable doubt. In civil cases, the standard of proof required for proving fraud as well as misrepresentation is not preponderance of the probabilities, but beyond reasonable doubt. Thus, the First Appellate Court has erred in applying the wrong standard of proof.

17. On a careful reading of the deposition of Smt. Bachint Kaur, it is evident that she has a grievance with Sh. Gurtej Singh, the defendant, as he does not reside with her and that she has been turned out of the house by the defendant while taking possession of her house.

18. The First Appellate Court has primarily set aside the sale deed while observing that the payment of the sale consideration has not been proved. It would be noted here that the learned senior counsel is not entirely correct in contending that such plea is beyond pleadings. In fact, in one sentence of para 3 of the plaint, she has asserted that the sale deed is without any consideration. However, on a careful reading of the sale deed (Ex.P2), it is evident that she admitted the receipt of the entire sale consideration. She has stated that "I have already received the entire sale consideration". On a careful reading of the deposition of DW.1-Sh. Sukhmander Singh and DW.2-Sh. Bhachar Singh, it is evident that they have stated that the payment was not made in their presence. However, when both the marginal witnesses enquired about it from the plaintiff, she admitted receipt of the amount. In the considered view of this Court, such statement does not necessarily lead

to an inference that there was no sale consideration, particularly when the fact of consideration is recited in the sale deed itself. From the reading of the sale deed, it is evident that the ownership rights in the land in dispute were immediately transferred along with the delivery of possession and the vendor did not reserve any right. Moreover, it is evident that the appellant, while appearing as DW.5, has stated that the entire sale consideration was paid. DW.3-Sh.Surinder Singh Baghla, the scribe, has also stated that the sale consideration was paid. She, after admitting the receipt of sale consideration before the Registrar, executed the sale deed. From a careful reading of the plaint, it is evident that the validity of the sale deed has been primarily challenged on the basis of misrepresentation and not on the ground of non-payment of the sale consideration. The registered sale deed carries a presumption of correctness as to its contents and of proper execution. In such circumstances, the First Appellate Court has erred in recording a finding that the sale deed was without consideration. The deposition of the plaintiff stands uncorroborated by any other evidence with respect to non-payment of sale consideration.

19. Moreover, in the absence of any error or perversity in the trial Court's judgment, the First Appellate Court is not justified in interfering with it merely because another conclusion is possible on re-appreciation of evidence.

20. Keeping in view the aforesaid facts, the present appeal is allowed and the judgment and decree passed by the First Appellate Court is set aside being erroneous. Accordingly, the judgment and decree passed by the trial Court is restored.

21. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

August 09, 2022
"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No