

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

**RSA-4939-2013 (O&M)
Decided on:-18.11.2022**

Mohan Singh and others

....Appellants

vs.

Bharpoor Singh and others

....Respondents.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

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

Mr. K.S. Boparai, Advocate with
Ms. Archana Vashisht, Advocate,
for the respondents.

HARKESH MANUJA J. (Oral)

By way of present appeal, challenge has been made to judgment and decree dated 16.08.2013 passed by the court of learned Additional District Judge, Ludhiana, reversing the judgment and decree dated 11.10.2012 passed by the court of learned Civil Judge (Junior Division), Ludhiana.

2. Facts of the present case are that the appellants-plaintiffs filed a suit for declaration, challenging the sale deed dated 09.03.2004, pertaining to land measuring 1 kanal 13 marlas forming part of the Khata No.108/110, Khasra No.365, situated at village Phullanwal, Tehsil and District Ludhiana, besides even praying for permanent injunction qua alienation and possession. It was stated in the plaint that the sale deed in question was a

result of fraud and misrepresentation, besides being bad for want of payment of entire sale consideration and also that the signatures of appellants were obtained on blank papers and later misused. As per the plaint, an agreement to sell dated 18.08.2003 was in fact executed between appellants and defendant No.6, who happened to be the brother of defendant No.1 and 2, for total sale consideration of Rs.15 lakhs; out of this Rs.7 lakhs was paid under the agreement, however, sale deed dated 09.03.2004 was got executed by defendants No.1 to 5 in their favour without payment of entire sale consideration.

3. The aforesaid plea was contested by the defendants-respondents i.e. the purchasers on the ground that the sale deed in question was duly signed by the plaintiffs and thus, validly executed on payment of entire sale consideration and even mutation No.10940 was also entered in their names. The respondents-defendants also stated that they were handed over possession of the suit property and the entries in the revenue record were also entered in their names.

4. The trial court vide its judgment and decree dated 11.10.2012, decreed the suit filed by the appellants-plaintiffs, holding that the sale deed in question was illegal, being based on fraud and misrepresentation. It was also recorded that the payment of entire sale consideration under the sale deed in question was not proved to have been made at the instance of respondents-defendants to their vendors.

5. Aggrieved against the judgment and decree dated 11.10.2012, the respondents-defendants filed their first appeal before the court of learned Additional District Judge, Ludhiana. Vide its judgment and decree dated 16.08.2013, the same was decided in favour of respondents-

defendants, thereby, dismissing the suit filed at the instance of appellants-plaintiffs, by recording that the burden to prove misrepresentation was upon the appellants-plaintiffs, which they failed to discharge. Besides this, it was also recorded that there was sufficient evidence on record, as regards valid execution of sale deed in question dated 09.03.2004 as well as transfer of possession in favour of respondents-defendants. Further, the first Appellate Court recorded that though, the entire sale consideration was shown to be as paid under the sale deed, however, even if the same was not accepted, it would not render it as void in view of Section 54 of Transfer of Property Act, 1882 (for short, "Act").

6. Impugning the judgment and decree dated 16.08.2013, passed by the first Appellate Court, learned counsel for the appellants submits that the sale deed in question was a result of fraud, as appellant No.1, namely, Mohan Singh never appeared before the Sub-Registrar, at the time of its registration. He further submits that the sale deed in question was hit by Section 54 of the Act as the entire sale consideration was never paid to the appellants. He also alleges that even two of the beneficiaries of the aforesaid sale deed, namely, Jagdev Singh and Harpal Singh were fake in their identity and existence.

7. On the other hand, learned counsel for respondents supports the judgment passed by the first Appellate Court and submits that respondents No.3 and 5 appeared before the trial court and even filed their written statement through their counsel. He also points out that there was no such plea ever raised by the appellants in their plaint, about disputing the identity and existence of respondents No.3 and 5. Learned counsel for the respondents also submits that though the entire sale consideration was duly

paid to the appellants at the time of execution of the sale deed in question, however, the same could not be held to be illegal for want of non-payment of part of sale consideration, in view of Section 54 of the Act.

8. I have heard learned counsel for the parties and gone through the paper book. In the facts and circumstances of the present case, I am unable to accept the contentions raised on behalf of the appellants.

9. Detailed and comprehensive findings of the fact have been recorded by the learned first Appellate Court while dealing with each and every aspect of the matter in dispute. As regards the plea of fraud and misrepresentation raised at the instance of appellants, the same has not been proved on record. It may be pointed out here that even to a court question put to appellant No.1, who appeared as PW-1, he specifically replied that Dharmatma Singh, one of the appellants/plaintiffs, who happens to be his son, was even present at the time of execution of sale deed. Besides it, even the photograph on the sale deed in question shows that all the four sons of appellant No.1 were present before the Sub-Registrar, at the time of registration of sale deed, which clearly belies the stand taken by the appellants of his absence from the said photograph even at the time of registration of sale deed.

10. Learned first Appellate Court also recorded that appellant No.1-Mohan Singh, while appearing as PW-1, also admitted his signatures and those of all the other appellants-plaintiffs on the endorsement of the sale deed Ex.P-6. Once, appellant No.1-Mohan Singh admitted his signatures on the endorsement of the sale deed, which is usually made before the Sub-Registrar, at the time of its registration, burden to prove the plea of misrepresentation, which always lay upon him was never discharged,

merely by production of the alleged agreement dated 18.08.2003 executed by plaintiffs in favour of respondent No.6. Even if the agreement dated 18.08.2003 is considered, admittedly under the said document, sale deed could be executed in favour of any one else even. Therefore, sale deed in favour of respondents No.1 to 5, who happen to be brothers and nephew of respondent No.6, can't be held to be bad in law, particularly when there was no such challenge laid by respondent No.6 based on any prior agreement in his favour. Thus, in the absence of any cogent and convincing evidence available on record, the registered sale deed in question could not be held to be illegal, being result of fraud or misrepresentation.

11. Besides it, I do not even find any merit in the plea raised on behalf of the appellants to the effect that the sale deed in question was bad in law being hit by Section 54 of the Act, for want of payment of entire sale consideration/price. The sale deed Ex.P-6 happens to be a registered document containing a specific averment as regards the payment of entire sale consideration. No doubt, the appellants had a right to rebut the averments made in the sale deed in question i.e. Ex.P-6, as regards the sale consideration, however, no reliable or convincing evidence was ever produced on record, so as to rebut the same. Still further, the only evidence adduced by the appellants-plaintiffs, in order to rebut the contents of the sale deed, as regards entire sale consideration, has been a legal notice dated 11.02.2004 (Ex.P-4), which was served on behalf of the brother (respondent No.6 herein) of respondents No.1 and 2 through his lawyer, containing the averment regarding some agreement to sell dated 18.08.2003, pertaining to the property in question. The appellants rely upon the agreement to sell dated 18.08.2003, so as to contend that in fact, the sale price agreed to

between them and respondent No.6 was in fact Rs.15 lakhs, whereas, the sale deed in question was got executed against payment of Rs.4 lakhs only. In this regard, it may be pointed out here that the alleged agreement dated 18.08.2003, was never produced or proved on record, so as to take the benefit of its content, as regards the sale consideration. In the absence thereof, the averments made in the legal notice dated 11.02.2004 (Ex.P4) could not be relied upon in the present facts for the purpose of rebuttal to the contents of the registered sale deed, as regards the payment of sale consideration.

12. It may also be relevant to point out here that a sale deed cannot be cancelled or declared to be illegal on account of non-payment of the entire sale consideration. In this regard, I find support from the judgment passed by Hon'ble the Supreme Court in **“Vidhyadhar vs. Mankikrao and another, 1999 AIR (SC) 1441**. Para 37 of the aforesaid judgment is relevant, which is reproduced as under:-

37. The definition indicates that in order to constitute a sale, there must be a transfer of ownership from one person to another, i.e., transfer of all rights and interests in the properties which are possessed by that person are transferred by him to another person. The transferor cannot retain any part of his interest or right in that property or else it would not be a sale. The definition further says that the transfer of ownership has to be for a "price paid or promised or part-paid and part-promised". Price thus constitutes an essential ingredient of the transaction of sale. The words "price paid or promised or part-paid and part-promised" indicate that actual payment of whole of the price at the time of the execution of sale deed is not sine qua non to the

completion of the sale. Even if the whole of the price is not paid but the document is executed and thereafter registered, if the property is of the value of more than Rs. 100/-, the sale would be complete.”

The aforesaid view has again been approved in a latest judgment passed by Hon'ble the Supreme Court in **“Dahiben vs. Arvindhbai Kalyanji Bhanusali (Gajra) (D) Thr Lrs. and others”, 2020(3) RCR(Civil)98.**

13. More than that, from the documentary evidence produced by respondents/defendants in the shape of jamabandi and the electricity connection records, there possession has been established and proved over the land in dispute, however, no prayer for possession has been made by the appellants/plaintiffs in their suit, thus simpliciter suit for declaration, filed at their instance could not be entertained even in view of the bar contained under Section 34 of Specific Relief Act, 1963.

14. As regards the plea raised on behalf of the appellants, disputing the identity of respondents No.3 and 4, there is no merit. Firstly, no such plea was ever raised by the appellants-plaintiffs in their plaint. Secondly, both respondents No.3 and 5 contested the suit by filing their written statement through their respective counsels and nothing substantial was ever brought on record so as to question their existence and identity.

15. Finding no substantial question of law involved in the present appeal as required under Section 100 CPC read with Section 44 of the Punjab Courts Act, 1918, I do not find any illegality or infirmity in the finding of fact and law as recorded vide impugned judgment and decree dated 16.08.2013 passed by the first Appellate Court. As such, the present appeal is dismissed with no orders as to costs.

16. Pending applications, if any, stand disposed of.

18.11.2022

sonika

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/ No

(HARKESH MANUJA)
JUDGE