

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

123

RSA-4870 of 2019(O&M)
Date of Decision: 07.12.2023

Naresh Kumar @ Naresh Yadav and others

....Appellants

Versus

Dharam Pal and others

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Shailendra Jain, Sr. Advocate with
Mr. Munish Kumar, Advocate
Ms. Saachi Mahajan, Advocate
for the appellants.

SANJAY VASHISTH, J.(Oral)

CM-13894-C-2019

Present application has been filed under Section 15 CPC
for seeking condonation of delay of 28 days in re-filing the appeal.

For the reasons enumerated in the application, the same
is allowed and the delay of 28 days in re-filing the appeal is condoned.

RSA-4870 of 2019(O&M)

1. Present regular second appeal has been filed by the
plaintiffs against the concurrent findings of dismissal of civil suit.
2. Suit for declaration was filed by the plaintiffs seeking a
decree of declaration, declaring the impugned sale deeds dated
09.01.1984 and 21.09.1983 and their mutations No. 2815 and 2768 as
null and void and not binding on the rights of the plaintiffs in any
manner whatsoever.

3. It was pleaded by the plaintiffs that previously Bhajni @ Bhajan Lal s/o Fattan and Chameli d/o Fattan were owners to the extent of 1/7th share i.e. 8 Kanals 6 Marlas each, of the land bearing Khewat No.518, Khata No.651, Khasra No.137 situated in the revenue estate of Ballabgarh, District Faridabad. Chameli, during her lifetime, executed a registered sale deed dated 09.01.1996 in favour of her brother Bhajni @ Bhajan Lal bequeathing all her rights in the suit property as well as in other properties in favour of her brother. After some time, Chameli expired on 27.12.1998. Bhajan Lal @ Bhajni also expired on 27.02.2012. After their death, plaintiffs being legal heirs of Bhajan Lal @ Bhajni acquired the properties of deceased-Bhajan Lal @ Bhajni and Chameli in equal shares.

4. It was further pleaded that father of the plaintiffs and some other co-owners, who are also defendants in the present suit had filed a suit for permanent injunction against Faridabad Complex Administration, which was decreed on 28.04.1995. Thereupon, first appeal was dismissed vide judgment dated 20.03.1999 and RSA No.3026 of 1999 was also dismissed by the Hon'ble High Court, even, SLP filed by the M.C. Faridabad was also dismissed on 06.08.2008, thus, decree dated 28.04.1995 passed against M.C. Faridabad by learned trial Court, was maintained and upheld.

5. Further contended, in the month of October, 2008, co-owners namely, Bihari Lal through legal heirs had filed an execution petition against MC Faridabad of decree dated 28.04.1995. Said

execution petition was instituted without impleading the plaintiffs and legal representatives of Chameli as necessary parties. On becoming aware of the said fact, father of the plaintiffs moved one application under Order 1 Rule 10 C.P.C., but during the pendency of the said application, Bhajan Lal @ Bhajni expired and in this way, plaintiffs were impleaded as party in place of Bhajan Lal @ Bhajni in the said execution proceedings. It is during the proceedings of the said execution application that the defendants disclosed that Bhajan Lal @ Bhajni and Chameli had already executed their sale deeds qua their respective share in favour of one Sumer Singh s/o Bhajan Lal, Om Parkash s/o Devi Ram, Dharam Pal s/o Bhim Singh, Raj Kumar s/o Bihari Lal and Rajesh Kumar s/o Khem Chand. Thereafter, on inspecting of the said execution file, plaintiffs came to know about the execution of the sale deeds which have been impugned by way of the present suit proceedings.

6. The basic plea of the plaintiffs is that *'had there been any knowledge of execution of the sale deeds at their instance*, there was no reason for Bhajan Lal @ Bhajni to get himself impleaded as a party in the execution proceedings. This conduct clearly shows that till the execution proceedings of decree dated 28.04.1995 taken place there was no knowledge with Bhajan Lal @ Bhajni that any sale deed, which have been impugned herein had been executed at his instance or at the instance of Chameli, thus, plaintiffs want the Court to

believe it to be an act of fraud committed upon the so called sellers in the sale deed i.e. Bhajan Lal @ Bhajni and Chameli.

7. While considering the plea of fraud, learned trial Court observed in specific that neither there is any specific plea as to in what manner fraud has been committed by the beneficiaries in the sale deed ; nor any evidence to prove the fact of fraud, also has been led before the Court. Taking note of the legal aspect that party who takes the plea of fraud, has burden to prove it.

Learned trial Court also examined the plaint and the evidence available on record and reached to the conclusion that there is no material available on record to reach to such conclusion that fraud has been committed upon the Bhajan Lal and Chameli (sellers) in the sale deed and same is well proved with the admissible evidence. Except to the allegations of fraud and to raise its assumption at the instance of the Court, there is nothing brought on record by the plaintiffs to substantiate that fraud has been committed upon them.

8. Findings recorded by learned trial Court in its paragraph No.19, 22 and 23 are reproduced herebelow:

'19. In the instant case, the sale deeds are admittedly the registered documents, therefore, there is a presumption that both are validly executed documents. The plaintiffs have challenged the same on the grounds of fraud, therefore, the onus is upon them to prove the same by leading cogent and reliable evidence. However, the plaintiffs have made only general allegations of fraud and no particulars of the fraud has been mentioned by the plaintiffs in their pleadings. The plaintiffs have examined Naresh Kumar as PW1 who has tendered his affidavit Ex.PW1/A reiterating the facts of the plaint. But his cross examination falsifies his version taken

in examination-in-chief as in his cross examination he has shown ignorance about the execution of the impugned sale deeds. He has deposed in his cross examination that he is not aware whether Bhajni and Devi Ram sold their share by way of registered sale deed in favour of Dharampal, Raj Kumar and Rajesh. He has further deposed that he does not know whether the aforesaid sale deed was got executed in the office of Tehsildar after receiving the payment of Rs.30,000/- in presence of Tehsildar. He does not know whether on 21.9.1983 Bhim Singh, Khem Chand and Smt. Chameli sold their share from suit property by sale deed in favour of Sumer Singh son of Bhajan Lal and Om Parkash son of Devi Ram. He has admitted that Sumer Singh is his real brother. He has also shown his ignorance about Ex.P5 and has deposed that he does not know whether the sale deed dated 21.9.1983 was executed in favour of his real brother Sumer Singh. He has also deposed that he does not know whether mutations have also got sanctioned regarding both the sale deeds.

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22. *At the time of arguments, Id. counsel for plaintiffs has argued that a suit was filed by Bihari Lal etc. against Faridabad Complex Administration, wherein Bhulli, Bhajni, Devi Ram and Chameli were also impleaded as plaintiffs and the said case was decreed. MCF filed appeal against the judgment before District Judge which was also dismissed and SLP before Hon'ble Supreme Court was also dismissed and Bhajni and Chameli were impleaded as party in all these cases. If the shares of Bhajni and Chameli would have sold by them there was no requirement to implead them as party. It shows that the sale deeds were executed by way of fraud as the same were concealed for many years. On the other hand, Id. counsel on behalf of the defendants has argued that as the mutations were not sanctioned in this regard and names of Bhajni & Chameli were existing in the revenue record and they were impleaded as party. This court is of the view that merely on the ground that they were impleaded as parties in the cases, it cannot be proved that the sale deeds were executed by playing fraud. Both the sale deeds are registered documents and there is a presumption that a registered documents is validly executed. A registered document, therefore, prima facie would be valid in law. The onus to proof thus would be on a person who leads evidence to rebut the presumption. The plaintiffs have challenged the sale deeds but they have failed to rebut the presumption regarding*

the sale deeds. In these circumstances, the solitary self serving statement of the plaintiffs is not sufficient to prove the averments of fraud. Hence, this issue is decided against the plaintiffs.

23. Ld. counsel on behalf of the defendants has argued that suit of the plaintiffs is not maintainable as the plaintiffs have not approached the court with clean hands and they have suppressed material facts from the court in their plaint. They have taken the averments that they are legal heirs of deceased as per family settlement which took place between the family members during the life time of Bhajan Lal but in fact no such family settlement took place. In their plaint they have averred that their father Bhajni @ Bhajni Lal died on 27.7.2012 whereas in his cross examination Naresh has deposed that his father expired in the year 2009. Only the three plaintiffs have filed this suit and remaining LR's of Bhajni have not challenged the sale deeds as they were aware of the sale deeds. With these averments, it has been prayed that the suit of the plaintiffs may kindly be dismissed.'

9. Learned trial Court has also observed that for the purpose of challenging the sale deeds, suit has been filed by only three legal representatives of Bhajan Lal @ Bhajni and rest of the legal heirs did not join as plaintiffs, thus, the suit stands dismissed.

10. After failing before the learned trial Court, plaintiffs took the plea in their first appeal before learned First Appellate Court. By recording its findings in paragraph Nos.15,16,17,18 and 19 the learned First Appellate Court vide order dated 21.02.2019 upheld the judgment and decree passed by learned trial Court. Thereafter, the plaintiffs/appellants approached this Court by way of present regular second appeal.

11. I have heard learned Senior counsel for the appellant at length, but, he failed to refer to any part of the plaint, where the manner of fraud has been explained, even nothing is there to point out

as a substantial evidence to believe that fraud has been committed against the sellers in sale deed.

12. Not only this, this Court notices that the impugned sale deeds are dated 21.09.1983 and 09.01.1984, whereas, Smt. Chameli expired on 27.12.1988 and Bhajan Lal @ Bhajni expired on 27.02.2012, during their lifetime, the said sale deeds were never challenged by them or by any other person and the present suit has been filed on 08.12.2012 by challenging the said sale deeds. Once, the limitation period for challenging the sale deed expired during the lifetime of its executors/sellers and same was never challenged by alleging any fraud within the time prescribed under law, undoubtedly, same attains finality. Moreover, in the present case, both the sale deeds are registered documents, which carries presumption of truth as well as public notice of it, thus, finding no substance in the submissions made by learned Senior counsel for the appellants/plaintiffs, this Court is unable to hold or even assume that plaintiffs have succeeded in proving the plea of fraud, having been committed upon the sellers in the sale deed dated 21.09.1983 and dated 09.01.1984.

13. There being no ground to take a different view than the one taken by both the Courts below. No question of law much less substantial question of law arises in the instant appeal for the consideration of this Court. Consequently, **the impugned judgments**

Neutral Citation No:2023:PHHC:160293
RSA-4870 of 2019(O&M)8

and decree passed by both the Courts below are hereby
maintained and the present appeal stands dismissed.

December 07, 2023
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[SANJAY VASHISTH]
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no