

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr.No.114-A

Case No. : RSA-1509-2023 (O&M)

Date of Decision : October 20, 2023

Ibrahim (now deceased) through his LRs Appellants
vs.

Jagdish Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Sanjiv Gupta, Advocate
for the appellants.

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GURBIR SINGH, J. :

1. **CM-5556-C-2023** : Allowed as prayed for.
CM-5557-C-2023 : Allowed as prayed for.
2. **Main Appeal (s)** : This is Regular Second Appeal filed against the concurrent findings recorded by both the Courts below.
3. In brief, the respondent/plaintiff Jagdish (hereinafter referred to as – the plaintiff) filed a suit for recovery of Rs.4,53,000/- on the allegation that predecessor-in-interest of the appellants/defendants (hereinafter referred to as – the defendant) namely Ibrahim mortgaged the suit land with plaintiff on the basis of registered mortgage deed dated 25.11.2011 for a sum of Rs.3,00,000/-. It was simple a mortgage. Over a period of time, the defendant failed to pay the amount advanced. So, suit for recovery along with interest was filed. The said suit was decreed ex-parte vide judgment and decree dated 03.10.2015, passed by learned Civil Judge (Junior

Division), Sirsa. The legal heirs of defendant moved application for setting aside the ex-parte judgment and decree dated 03.10.2015. Same was allowed. Ex-parte judgment and decree were set aside.

4. On the basis of evidence led on the file, the suit was decreed by learned Trial Court. The appeal filed against the judgment and decree passed by learned Trial Court was dismissed.

5. Learned counsel for the appellant has argued that at the time of execution of the mortgage deed dated 25.11.2011 in favour of plaintiff, a civil suit for recovery of Rs.5,02,400/- titled **Balbir vs. Ibrahim**, filed on the basis of mortgage deed dated 05.06.2007 for Rs.1,10,000/- in favour of Balbir and another mortgage deed dated 04.06.2010 of Rs.2,04,000/-, shown to have been executed by Ibrahim in favour of Balbir, was pending, meaning thereby that at the time of execution of alleged mortgage deed dated 25.11.2011, the defendant was under legal obligation to pay the aforesaid amount of Rs.5,02,400/-. He has therefore argued that when the defendant did not pay the earlier amount to Balbir Singh in the other case, in which the plaintiff himself stood witness, then in normal course, there was no question of advancing more money to the defendant. So, the execution of mortgage deed dated 25.11.2011 is doubtful and the same was got executed from the defendant fraudulently or the same was result of fraud, played upon the defendant. Moreover, no amount was paid in the presence of Sub-Registrar. It is written in the mortgage deed that the amount was already paid in cash. No witness has been examined to prove the payment of amount of consideration of the mortgage deed. The defendant was unmarried. He was not in need of any money. There was no question of getting such a huge

amount advanced by mortgaging the land. The aforesaid Balbir Singh has also filed suit for recovery on the basis of mortgage deed of even date dated 25.11.2011. Both the mortgage deeds are with regard to the same property i.e. land measuring 04 kanals 0 marlas, comprised in same khewat and having same khatoni number. Scribe of both the mortgage deeds is also the same. The mortgage deed is proved to be result of fraud but Courts below failed to consider the same.

6. I have heard learned counsel for the appellants and perused the case file.

7. The suit has been filed for recovery of the amount secured by way of mortgage deed which was duly registered before the Sub-Registrar. The plaintiff gave notice to the defendant before filing the suit. It is not the case of the defendant that notice was replied. The defendant did not challenge the mortgage deed during his life-time. Rather, suit was decreed ex-parte. It is not the case of defendant that the mortgage deed was not executed by him but simple version of defendant is that it was result of fraud and no amount of consideration was received by him. When fraud is pleaded by a party, the burden is on the said party to prove how the fraud was committed. Presumption of truth attaches with the registered document. Although said presumption is rebuttable but other party is required to rebut the presumption by leading cogent evidence. When an executant admits before the Sub-Registrar that he had already received the amount of consideration mentioned in the document to be registered, then same can only be disproved by leading cogent evidence. In this case, no such evidence has been led.

8. In view of the above discussion, this Court is of the view that the finding recorded by both the Courts below is in accordance with law. There is neither any misreading nor misappreciation of evidence by both the Courts below. The concurrent finding of fact recorded by both the courts below is based on proper appreciation of evidence and does not suffer from any perversity or illegality. No question of law, much less substantial question of law, arises for determination in the instant second appeal. The appeal is without any merit and is accordingly dismissed in limine.
9. Pending applications, if any, shall stand disposed of along with this judgment.

October 20, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes.
Whether reportable ?	Yes/No.