

RSA-2776 of 2023

2023:PHHC:161975

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

RSA-2776 of 2023

Date of decision: 15.12.2023

Satwanti

.....Appellant

Versus

Jal Kaur (deceased) through LRs

.....Respondents

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Present: - Mr. R.K. Barman, Advocate,  
for the appellant.

**NAMIT KUMAR, J.**

1. This regular second appeal is directed against the judgment and decree dated 18.01.2019 passed by Additional Civil Judge (Senior Division), Bahadurgarh, whereby suit for declaration filed by plaintiff-Jal Kaur (since deceased) was decreed as well as against the judgment and decree dated 11.08.2023 passed by Additional District Judge, Jhajjar, whereby appeal filed by the appellant-defendant against the judgment and decree dated 18.01.2019, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. The brief facts of the case are that plaintiff filed suit for decree of declaration with consequential relief of permanent injunction pleading therein that defendant was owner in possession of total land measuring 6 Kanal 7 Marla out of the land of Khewat Nos. 249 & 300, situated within the revenue estate of village

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Jassaur-Kheri, Tehsil Bahadugarh, District Jhajjar. Defendant approached plaintiff to obtain loan of Rs.18,00,000/- against the surety of the land owned and possessed by her. The loan was granted on 23.12.2012 and mortgage deed No. 7308 dated 23.11.2012 was executed and registered. The loan amount was to be returned within one year i.e. upto 22.11.2013 along with interest @ 2% per month. It was also agreed that in case of failure to return the loan amount, the defendant shall be bound to execute sale deed of mortgaged land in favour of plaintiff. However, defendant did not pay even a single penny and the principle amount has accumulated with interest to the tune of Rs.26,00,000/- till 22.10.2014. Plaintiff requested the defendant several times to repay the loan amount and to get the mortgage deed cancelled but of no result. Even legal notice dated 18.09.2014 could not fetch any result. Defendant finally refused to consider the request of plaintiff on 29.09.2014.

3. Upon notice, defendant contested the suit by taking initial objections with regard to cause of action, *locus-standi* and maintainability of suit. On merits, she denied in totality of receipt of loan and also upon the factum of execution of the mortgage deed. She submitted that the mortgage deed, if any, is result of fraud committed by plaintiff and witnesses. After submitting that the mortgage deed being illegal and invalid document as procured by committing fraud and after denying remaining averments of the plaint, the defendant lastly prayed for dismissal of the suit.

4. Replication was filed by the plaintiff reasserting the stand taken in the plaint and denying the averments of written statement.

5. From the pleadings of the parties, following issues were framed by the Court of first instance, vide order dated 23.02.2017:-

- (1) Whether the plaintiff is entitled to a decree for declaration to the effect that the defendant be directed to make payment of the alleged amount to the plaintiff and/or execute the sale-deed in favour of the plaintiff, failing which the plaintiff be declared owner-in-possession of the land in dispute? OPP
  - (1A) Whether plaintiff is entitled to a decree for recovery of Rs.18,00,000/- on the grounds mentioned in the plaint as prayed for? OPP
  - (2) Whether the plaintiff is entitled to a decree for permanent injunction restraining the defendant from alienating and creating third party interest over the land in dispute fully detailed in para No. 3 of the plaint forcibly and illegally or otherwise in any manner? OPP
  - (3) Whether the suit is not maintainable in the present form? OPD.
  - (4) Whether the plaintiff has no cause of action and *locus standi* to file the present suit? OPD
  - (5) Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD
  - (6) Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD
  - (7) Whether the plaintiff has not come with clean hands and suppressed the material facts from this court? OPD
- Relief

6. The parties led their respective evidence. The Court of first instance, after appreciating evidence on record decreed the suit filed by the plaintiff.

7. Feeling aggrieved against the said judgment and decree of the trial Court, defendant preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated

11.08.2023.

8. Learned counsel appearing for the appellant would vehemently argue and contend that the judgments and decrees of the Courts below are palpably erroneous and contrary to clinching evidence adduced by appellant. He would further argue that respondents/plaintiff played fraud on the appellant-defendant and the mortgage deed has not been properly proved on record. He further contended that the judgments and decrees of the Courts below suffer from illegality and perversity, therefore, same deserved to be set aside.

9. I have heard learned counsel for the appellant and perused the record.

10. Respondents/plaintiff filed suit for declaration with consequential relief of permanent injunction on the ground that appellant-defendant borrowed an amount of Rs.18,00,000/- from her and in lieu thereof she executed mortgage deed dated 23.11.2022 as a security document with condition that in case of failure to return the loan amount within the prescribed period, the mortgage deed would be termed as a conditional sale. In support of her claim, plaintiff examined five witnesses. PW-5 Surender Singh, one of the attesting witnesses to the mortgage deed, who is related to both the parties, supported the case of the plaintiff and categorically stated that plaintiff gave the said amount to the defendant at home in his presence. Plaintiff placed on record the certified copy of the mortgage deed as Ex.PW1/D. The said mortgage deed Ex.PW1/D has been duly proved by PW2 Ganesh Kumar, Record Keeper of Sub Registrar, Bahadurgarh. Plaintiff further examined PW3 Shri Bhagwan, Deed writer, who

deposed that as per record/register No.1226 dated 23.11.2022 the mortgage deed qua a sum of Rs.18,00,000/- was got executed by Satwanti wife of Sh. Krishan qua her land measuring 6 kanals 17 marlas situated in village Jassar Khedi in favour of Smt. Jal Kaur with interest @ 2% per annum and the said mortgage deed was prepared by him. He further deposed that he had seen the certified copy of the mortgage deed and identified his signatures over the same. PW4 Satnarayan, Narmbardar also supported the case of the plaintiff. On the other hand, appellant failed to prove that the said mortgage deed was the result of fraud played upon her by the plaintiff. The entire burden is on the party who alleges fraud and the same must be proved by producing cogent and clinching evidence. The general allegation in regard to fraud and collusion implying some kind of fraud is not enough without particulars. Allegations of fraud must be substantially proved by the party making the same, though it does not mean that every puzzling artifice or contrivance resorted to by the opposite party should be unravelled. But there has to be some evidence on record to indicate that a document is tainted with element of fraud. Appellant-defendant in support of her case examined DW2 Syed Faisal, fingerprint and handwriting expert, who in his cross-examination stated that comparison was not conducted of similarity and dissimilarity of ridges of the disputed and specimen thumb impressions and further deposed that the pattern of spiral whorl of disputed and specimen thumb impressions has been same. Therefore, no weightage was given to the statement of this witness. The Trial Court has meticulously

examined the pleadings of the parties as well as ocular and documentary evidence placed on record, which have been affirmed by the Appellate Court. Except bald averments in the written statement and ocular evidence during trial, appellant-defendant has failed to produce cogent and clinching evidence to substantiate her claim that plaintiff has committed fraud and has created the mortgage deed Ex.PW1/D.

11. Concurrent findings have been recorded by both the Courts below that mortgage deed Ex.PW1/D was executed in token of receipt of amount by the appellant-defendant. Learned counsel for the appellant has failed to show that the findings recorded by Courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

12. In view of above, no question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

13. Dismissed.

14. Pending application(s), if any, stand disposed of accordingly.

15.12.2023  
R.S.

**(NAMIT KUMAR)**  
**JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No