

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****112****RSA-3891-2019 (O&M)****Date of Decision : 04.11.2024**

Sukhdev Singh @ Dev Singh

....Appellant

VERSUS

Surjit Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Anureet Singh Sidhu, Advocate for the appellant.

ALKA SARIN, J. (Oral)**CM-10487-C-2019**

1. This is an application for condonation of delay of 103 days in re-filing the present appeal.

2. For the reasons stated in the application, the same is allowed. The delay of 103 days in re-filing the present appeal is condoned.

CM-10489-C-2019

3. This is an application for condonation of delay of 1 day in filing the present appeal.

4. For the reasons stated in the application, the same is allowed. The delay of 1 day in filing the present appeal is condoned.

RSA-3891-2019 (O&M)

5. Present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 20.11.2015 passed by the Trial Court and the judgment and decree dated 23.10.2018 passed by the First Appellate Court.

6. The brief facts relevant to the present *lis* are the plaintiff-appellant filed the present suit averring in the plaint that the defendant-respondent Nos.1 to 3 and defendant-respondent No.4 are the nephews of the plaintiff-appellant and that the plaintiff-appellant is the owner of the land measuring 11 Acres 05 Kanals 14 Marlas. The entire chunk of the land is unpartitioned. It was further averred that the plaintiff-appellant met with an accident in the year 1999 which weakened his mental faculty. The plaintiff-appellant was unable to manage his land. The land was given on lease to defendant-respondent Nos.1 to 4 in the year 2006 and they paid the lease money till 2007. Thereafter, they stopped paying the lease money and it transpired that the land measuring 31 Kanals had been transferred in favour of defendant-respondent Nos.1 to 4 vide a registered sale deed dated 02.05.2007. It was further averred in the plaint that the said sale deed was illegal, null and void and the plaintiff-appellant was an illiterate person and that the sale deed has fraudulently been got executed. On notice the defendant-respondents filed their written statement raising various preliminary objections regarding maintainability. It was denied that the plaintiff-appellant had lost his mental faculty. It was further denied that the plaintiff-appellant was the owner of land measuring 11 Acres 05 Kanals 14 Marlas as alleged. It was further the stand that the sale deed was a valid sale deed and defendant-respondent Nos.1 to 4 were in exclusive possession of the suit property. Rejoinder was filed. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to declaration, as prayed for ? OPP
 2. Whether the plaintiff is entitled to the relief of possession, as prayed for ? OPP
 3. Whether the plaintiff is entitled to relief of permanent injunction, as prayed for ? OPP
 4. Whether the suit of the plaintiff is not maintainable in its present form ? OPD
 5. Relief.
7. The Trial Court vide judgment and decree dated 20.11.2015 dismissed the suit. Aggrieved by the same an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 23.10.2018. Hence, the present regular second appeal.
8. Learned counsel for the plaintiff-appellant would contend that the plaintiff-appellant was not in a mentally fit condition and the sale deed was got fraudulently executed. It is further the contention that PW2 and PW7 had stepped into the witness-box to prove the medical condition of the plaintiff-appellant and hence the weak medical condition of the plaintiff-appellant was amply proved showing that he was not mentally fit to execute the sale deed.
9. Heard.
10. In the present case, though the suit itself was filed challenging the sale deed dated 09.05.2007 on the ground that the same was the result of

fraud taking advantage of the weak mental faculties of the plaintiff-appellant, however, the same was not filed through next friend but was filed through a power of attorney holder i.e. his wife. The suit having been filed on the ground that the plaintiff-appellant was a person of weak mental faculties and hence could not have executed the sale deed is not substantiated as had it been so then he could not lawfully have executed the power of attorney either. Having filed the suit through a power of attorney holder negates the stand taken by the plaintiff-appellant that he had weak mental faculties. Further still, both the Courts have concurrently found that there was nothing on the record to even suggest that the plaintiff-appellant was not in a position to execute the sale deed. DW1 Inder Kumar, Registry Clerk had proved on the record the sale deed and Jamabandi as Ex.D11 and Ex.D12. Another witness DW2 Harnek Singh had appeared in the witness-box and had deposed that the sale deed had been prepared at the behest of Sukhdev Singh and after admitting the contents to be correct Sukhdev Singh had appended his thumb impressions on the same in the presence of Randhir Singh and thereafter that witness had also put his signatures in the presence of Sukhdev Singh. It was further stated by the said witness that the draft sale deed was presented before the Sub-Registrar, Patiala who verified the facts from Sukhdev Singh and read over the contents to Sukhdev Singh. Photographs of the vendor, vendee and the witnesses were also taken. Despite lengthy cross-examination nothing could not be elicited from the said witness. In the absence of any cogent evidence that the plaintiff-appellant had weak mental faculties and that the sale deed was the result of

fraud, no fault can be found with the judgments and decrees passed by both the Courts.

11. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

04.11.2024
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO