



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.320 of 2023 (O&M)

Reserved on: 26.04.2024

Date of Order:16.05.2024

Smt. Kanta

.Appellant

Versus

Santosh and another

..Respondents

RSA No.328 of 2023 (O&M)

Smt. Kanta

.Appellant

Versus

Santosh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Dinesh Arora, Advocate
for the appellant.

Mr. Vishwajit Bedi, Advocate and
Mr. Rahul Judge, Advocate
for respondent no.1

ANIL KSHETARPAL, J

1. BRIEF FACTS OF THE CASE

1.1 With the consent of the learned counsel representing the parties,
two cross regular second appeals shall stand disposed of by a common
order.

1.2. Smt. Kanta is the appellant in both the appeals. She was
defendant in the first suit i.e. Civil Suit No. RBT/37/2012 (Santosh vs. Brij
Mohan and another) filed on 21.01.2012, whereas, she was plaintiff in the



second suit i.e. Civil Suit No.RBT/36/2012 (Kanta vs. Brij Mohan and another), filed on 08.02.2012.

1.3. The trial Court while passing two separate judgments of the same day, dismissed the suit filed by Smt. Santosh, whereas decreed the suit filed by Smt. Kanta (appellant). Smt. Santosh filed two appeals which have been accepted by the First Appellate Court while reversing the judgment of the trial court.

1.4. In order to comprehend the issues involved in these cases, the relevant facts in chronological order, are required to be noticed, briefly.

1.5. Sh. Brij Mohan, defendant no.1 in both the suits purchased a plot measuring 302 sq. yards vide sale deed dated 02.12.1986. He sold the western part of the plot measuring 150 sq. yards in favour of Smt. Santosh (Respondent no.1) vide registered sale deed dated 07.12.1987. On the remaining plot he constructed his house after getting loan. He sold plot measuring 150 sq. yards in favour of Smt. Kanta vide registered sale deed dated 30.07.1991. Smt. Santosh sold the plot purchased by her from Sh. Brij Mohan in favour of Sh. Charan Singh vide registered sale deed dated 13.01.2005. Sh. Brij Mohan is alleged to have further sold 150 Sq. yards property to Smt. Santosh vide registered sale deed dated 13.10.2011. In substance, the dispute is with regard to the correctness of the sale deed dated 13.10.2011, allegedly executed by Sh. Brij Mohan in favour of Smt. Santosh with respect to 150 square yards plot which was already sold to Smt. Kanta (appellant) on 30.07.1991.

1.6. In both the suits, Sh. Brij Mohan is defendant no.1. He denies the execution of sale deed dated 30.07.1991, in favour of Smt. Kanta,



whereas admits two sale deeds executed by him in favour of Smt. Santosh on 02.12.1986 and 13.10.2011.

1.7. The copies of all the sale deeds, namely, 02.12.1986, 07.12.1987, 30.07.1991, 13.01.2005 and 13.10.2011, have been produced.

1.8. Sh. Brij Mohan has not come forward to testify in the court in both the suits. In order to prove the registered sale deed, Smt. Kanta has appeared as PW1, whereas she has examined the officials of Registrar's office to prove the sale deeds, namely, PW2-Neeraj Kumar and PW3-Om Parkash. She has also examined PW4A-Shamsher Singh Malik, the Handwriting and Fingerprint Expert, who has submitted report that the signatures of Sh. Brij Mohan have been appended on the various sale deeds as well as receipts. He has also proved the signatures of Sh. Avtar Singh (husband of Smt. Kanta) on the receipts dated 30.07.1991 and 07.04.1992.

2. **FINDINGS OF THE FIRST APPELLATE COURT:-**

2.1. The relevant findings of the First Appellate Court while reversing the judgment passed by the trial court are discussed in paras 20 to 27, which read as under:-

“20. In the present suit, the burden of proof that she (i.e. Smt. Kanta) had purchased the suit property i.e. a house from the defendant no. 1 Sh. Brij Mohan vide a registered sale deed No. 1515 dated 30.07.1991 for a valid sale consideration was, upon the respondent/plaintiff Smt. Kanta. However, she did not examine the Scribe or any attesting witness of the aforesaid sale deed claimed to have been executed in her favour by the defendant no. 1 since the vendor/defendant no. 1 had himself denied to have executed the same, in her favour (i.e. of plaintiff Smt. Kanta) and proper proof of execution of the sale



deed dated 30.11.1991 in favour of plaintiff Smt. Kanta, was incumbent.

21. It was found that mere certified copy of the sale deed dated 1515 dated 30.07.1991- Ex.P4 was adduced in her evidence by the plaintiff Smt. Kanta, which was deemed to be a valid and sufficient proof, thereof, by the Ld. Civil Court, while ignoring the duly proved registered sale deed dated 13.10.2011 in accordance with law by examining the scribe and an attesting witness, thereof which was even otherwise, admitted to have been executed by the defendant no. 1, in favour of the defendant no. 2 Smt. Santosh. In fact, it was duly found proved by the defendant no. 2 Smt. Santosh (i.e. the appellant) that at the time of purchase of the house in question by her, in the year 2011, the house was free from mortgage, which was an undisputed fact from either the plaintiff Smt. Kanta or the original owner/defendant no.1.

22. Considering the finding of the Ld. Civil Court that presumption of correctness was attached, to the document of sale deed executed, in favour of Smt. Kanta being a registered document, then even the document of sale deed executed, in favour of Smt. Santosh was also, entitled to the same presumption (of correctness) being a registered document. Hence, in the considered opinion of this Court, the finding arrived at, by the Ld. Civil Court, to hold the sale deed of Smt. Kanta, legal and binding, was not found sound.

23. Although, there is no bar in purchase of a mortgaged property from a mortgagor, then the purchaser steps in the shoes of the predecessor-in-interest and has to repay the loan etc. to the mortgagee, Bank in the present case. Since it was a fact admitted that at the time of purchase of the house in question by Smt. Kanta, the suit property



was not free from the encumbrance of mortgage, and that vide the NOC, the defendant no. 1 i.e. the original owner Sh. Brij Mohan only, had cleared the mortgage dues of the Syndicate Bank, and there was no proof or even claim raised by Smt. Kanta, that it was her who had paid the mortgage dues to the said Bank, and that she had a right, to be owner in possession of the property for that reason, as well, in the opinion of this Court, the plaintiff Smt. Kanta, did not step in the shoes of the predecessor-in-interest and thus, could not be held entitled to be called an owner in possession of the suit property as a mortgagor, vide a document of sale deed dated 30.07.1991 which even otherwise, had not been proved by her, in accordance with law i.e. either in her oral evidence or by examining its attesting witness or the scribe or the vendor. There was no recital found mentioned in the sale deed of Smt. Kanta that after purchase of the property, she would pay all the dues to the mortgagee bank. It must not be forgotten also, that the vendor/defendant no. 1 had claimed in his pleadings, itself that he had not executed any sale deed, in favour of Smt. Kanta.

24. In the opinion of this Court, it was incumbent upon the respondent/plaintiff Smt. Kanta, to prove the sale deed executed in her favour as in the same suit, the defendant had duly proved their pleadings and the other civil suit titled as 'Santosh v Kanta & Anr.', had also been proved by the plaintiff Smt. Santosh, in accordance with law, the suit which was found to have been wrongly dismissed by the Ld. Civil Court, on the same date and the appeal of Smt. Santosh allowed vide a separate judgment of even date by this Court in appeal.

25. Not only that, the sale deed dated 30.07.1991 claimed to have been executed by the defendant no. 1 in favour of



the plaintiff Smt. Kanta, appeared to be a suspicious and a sham document as the sale consideration for the said property was fixed as Rs. 20,000/- only, out of which a sum of Rs.10,000/- was claimed, to have been paid by her and received by defendant no.1, already, while the balance was agreed to be paid later. However, by way of Receipts Mark A and B, as placed reliance upon by her (i.e. Smt. Kanta) only, the sale consideration of the suit property was stated to be a sum of Rs. 3,00,000/-only (vide Mark B) instead of Rs. 20,000/- (as per Ex.D6) and balance of Rs. 70,000/- only (Mark A) instead of Rs. 10,000/- (as per Ex.D6) received by defendant no. 1 and paid by Smt. Kanta, in the presence of Sh. Avtar Singh (husband of Smt. Santosh), who denied his signatures on the aforesaid receipts, which even otherwise, were photocopies and not admissible in evidence.

26. Hence, it was observed that the evidence of respondent/plaintiff Smt. Kanta was contrary to her own pleadings and disproved by her own evidence and witness. Whereas, appellant/defendant no. 2 Smt. Santosh had proved her registered sale deed for being executed for a sale consideration of Rs.12,35,000/- duly admitted by the vendor/defendant no. 1 and by examining the Scribe and an attesting witness as per law. As such, Smt. Kanta miserably failed to prove her sale deed Ex.D6 to be registered for valid sale consideration, in accordance with law.

27. It was thus, noticed that the findings and the decisions arrived at, by the court of Sh. Pardeep Chaudhary, the then Ld. Civil Judge (Jr. Divn.) Bahadurgarh, Jhajjar, were wrong, illegal, prejudicial, to the interests of Smt. Santosh and based upon conjectures and surmises, for the reasons known to him. Therefore, the impugned judgment and decree are not, at



all entitled to stay in operation as such, the same is hereby set aside and overruled.”

3. **ARGUMENTS PUT FORTH BY THE LEARNED COUNSEL REPRESENTING THE PARTIES.**

3.1. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book..

3.2. Apart from the oral arguments, the learned counsel representing the parties were granted an opportunity to file their written synopsis. The learned counsel representing the appellant has filed a written note of his submissions which reads as under:-

“NO LEGAL REQUIREMENT TO EXAMINE SCRIBE AND WITNESS TO PROVE SALE DEED DULY REGISTERED.

In this regard it is relevant to refer to section 68 of Evidence Act;- 68. Proof of execution of document required by law to be attested. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]

Section 54

Section 54 of the Transfer of Property Act, 1882 defines the "sale" is a transfer of ownership in exchange for a



price paid or promised or part-paid and part-promised. It also provides that such transfer, in case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. It is not the requirement of law that the sale deed is to be attested by any attesting witness so as to prove the due execution by examining at least one attesting witness.

"54. "Sale" defined.-*"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*

Sale how made.-*Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.*

The appellant relies upon law laid down in Smt. Hans Raji vs Yosodan 1996 AIR (SC) 761 wherein Hon'ble Apex Court held as Under :-

"so far as the applicability to the proviso to Section 68 is concerned, it must be noted that there was no occasion for the respondent to examine any attesting witness to the document in question as it was a Sale Deed which never required any attestation and even if some "marginal" witnesses had attested the document the document did not attract Section 68 of the Evidence Act which in term applies to the proof of execution of document



required by law to be attested"

Appellant also relies upon Sewa Singh vs Balwinder Kaur and others law finder id 2015756

EXAMINING WITNESSES OF SALE DEED EXECUTED IN FAVOUR RESPONDENT NO 1 IS OF NO RELEVANCE:

Once the defendant no 1/respondent no 2 had already sold suit property to appellant he had no right or title left in the property to further transfer to anyone, therefore examining witnesses of the subsequent sale deed executed in favour respondent is of no relevance.

PLEADING OF DEFENDANT NO 1/ RESPONDENT NO 2 COULD NOT BE RELIED IN ABSENCE OF EVIDENCE.

It is fundamental that any amount of evidence without pleadings and any amount of pleadings without evidence are of no use. Ld. Appellate Court failed to appreciate that respondent No.2 though filed his written statement but did not step into witness box. The pleading of a party who does not step in the witness box to depose and support his pleading, can not be taken into account. The Ld/- Appellant court grossly erred in missing an important fact that in the present case respondent no 1 examined herself only..

PARALLEL SUIT

Respondent no.1 also filed suit for declaration to the extent that the sale deed in favour of present appellant was illegal null and void and not binding on the parties. In the said suit respondent no.1 examined scribe and the witness of sale deed in her favour. In the present case neither scribe was examined nor the witness was examined.

Even otherwise question/controversy involved in the present case was whether after execution of the sale deed



in favour of present appellant, Respondent No.2 had any title over the suit property to transfer in favour of respondent No.1. The present appellant duly proved the execution of sale deed in her favour. Legally executed sale deed in her favour of present appellant could not have been discarded only on the ground that the scribe and witness were not examined. Therefore her suit was dismissed.

PLEA OF BONAFIDE PURCHASER

The sale deed in favour of the present appellant was executed in year 1991, the good times when there was trust and faith in general public. The sale deed was executed in those times when the transactions were done on good faith. The appellant respectfully submits that even after the execution of the sale deed in her favour there was some amount pending by her to be paid to the respondent No.2. The said amount was paid on 07.04.1992 and the receipt was signed by Avtar Singh husband of respondent no. 1. The said receipt and factum of transaction between appellant and respondent No.2 was also put to him. Thereafter the present appellant examined handwriting expert who proved his signatures on the said receipt.

This fact itself was sufficient to prove that respondent No.1 was aware of the transaction between appellant and respondent No.2 and hence could not have claimed any right as a bona fide purchaser.

NO CHALLENGE BY VENDOR

The Ld. Appellate Court misread and wrongly appreciated this fact and observed that the sale consideration was Rs. 20,000 only whereas in the receipt the sale consideration was stated to be Rs. 3 lac. It is submitted that this plea at most was available with the vendor who never challenged sale deed executed by him



in favor of appellant. The respondent no I did not have any such defence to raise in absence of such challenge by vendor of appellant.

The judgement passed by appellate court is not only contrary to law but the decision has failed to determine material issue of law resulting to error or defect in the decision of the case. This Hon'ble court has jurisdiction to re-appreciate evidence for just and proper adjudication of the lis.

Under Section 41 of the Punjab Courts Act, 1918, the scope of interference in the regular second appeal is wider when compared with Section 100 CPC. On careful reading of the three sub clauses of Section 41(1) of the Punjab Courts Act, 1918, it is evident that the decision which is contrary to law or the decision which failed to determine some material issue of law as also a substantial error or defect in the 4 procedure provided under the Code of Civil Procedure or by any other law for the time being inforce which may possibly have produced error or defect in the decision of the case, are amenable to interference in second appeal. Consequently, it is permissible for the Court while deciding second appeal to re-appreciate the evidence if the decisions of the Courts suffer from perversity.

Reliance is placed upon RSA No.5792 of 2019(O&M) Sukhdev Singh vs. Manish Aggarwal decided on 30.0-1.2024.”

3.3. This court has considered, analyzed and evaluated the submissions of the learned counsel representing the parties and examined the judgments of the courts below along with requisitioned lower courts record.

4. **EVIDENCE LED BY THE RESPECTIVE PARTIES:-**

4.1. At the first instance, neither the parties nor the courts took steps



to consolidate both the cross suits and it has resulted in the repetition of recording of evidence and in wastage of precious judicial time of the courts.

4.2. In both the suits, separate evidence was led by the parties. As many as six officials from the registration office were summoned and examined by the parties in order to prove the sale deeds. The same handwriting expert was examined by Smt. Kanta in both the suits. It is expected that the courts would evolve a mechanism for identifying the connected cases in order to save the precious time of the courts as well as parties.

5. **ANALYSIS OF THE REASONS RECORDED BY THE FIRST APPELLATE COURT:-**

5.1. Now the Bench proceeds to examine the reasons recorded by the First Appellate Court to set aside the trial Court's elaborate judgment.

5.2. After noticing the pleadings, the First Appellate Court has reproduced the findings of the trial court from para 14 to 19. Thereafter, the grounds of appeal filed by Smt. Kanta have been reproduced. Thereafter, the arguments of the learned counsel representing the parties and the evidence have been noticed. From para 15, the First Appellate Court has recorded its reasons while analysing the judgment passed by the trial Court. From para 22 to 27, the First Appellate Court has given its own reasons to set aside the trial court's judgment. In the considered opinion of this Court, the First Appellate Court is not required to reproduce the grounds of appeal or the relevant paragraphs of the trial Court's findings unless it is very important. Upon examination of the entire material, this court is of the considered view that the Presiding Judge lacks proficiency and job maturity.



A member of lower judiciary becomes a member of Superior Judiciary after gaining minimum experience of at least 10 years. It is expected from the Judicial Officers having years of experience to apply logic and maturity while formulating a judgment. It is reasonable to also expect that the First Appellate Court would cull out the points which need adjudication as required under Order 41 Rule 21 CPC. In case of direct recruits, the Judges of Superior Judiciary are selected based on experience of 7 years in law practice to be eligible to become a member of Superior Judiciary. Hence, job sophistication is particularly required in this field.

5.3. At this stage, it is important to analyze the concept of burden of proof. As per Section 101 of the Indian Evidence Act, 1872 (hereinafter referred to as 'the 1872 Act'), whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove the same. In layman's terms, it can be explained that a party who fails if no evidence is led at all, then the burden of proof is upon the aforesaid party i.e. the party that fails. The burden of proof never shifts. It remains static and unaltered throughout the trial of the case. However, there is another concept known as the onus of proof which constantly shifts. Some authors have a theory that the burden of proof can be defined in two different senses. Onus of proof refers to the burden of adducing evidence or presenting proof of specified fact alleged by a party. It is dynamic and keeps shifting. The burden of proof is also known as onus probandi.

5.4. Once both the parties have full knowledge of the respective case and they have led evidence, the question of burden of proof becomes a question of academic value. Reference in this regard can be made to para 11



of the judgment passed by the Supreme Court in Narayan Bhagwantrao Gosavi Balajiwale vs . Gopal Vinayak Gosavi and others AIR, 1960, SC 100, which reads as under:-

“The appellant contended that this was a special suit under Section 5(3) of -the Charitable and Religious Trusts Act, 1920, and that the burden lay upon the respondents to prove that there was a religious and charitable trust of a public character in favour of the deity. He contended that the two Courts below had placed the burden of proof upon him to show by positive evidence that the deity was a family deity, and that the properties were his private properties. According to him the defendants ought to have proved their case, and if they failed to prove affirmatively that case, then the suit ought to have been decreed in his favour. The expression "burden of proof" really means two different things. It means sometimes that a party is required to prove an allegation before judgment can be given in its favour; it also means that on a contested issue one of the two contending parties has to introduce evidence. Whichever way one looks, the question is really academic in the present case,, because both parties have introduced their evidence on the question of the nature of the deity and the properties and have sought to establish their own part of the case. The two Courts below have not decided the case on the abstract question of burden of proof ; nor could the suit be decided in such a way. The burden of proof is of importance only where by reason of not discharging the burden which was put upon it, a party must eventually fail. Where, however, parties have joined issue and have led evidence and the conflicting evidence can be weighed to determine which way the issue can be decided, the abstract question of burden of proof becomes academic.”



5.5. It is also a well settled legal principle that even if the sale deed has been attested by witnesses, they are not required to be examined to prove the registered sale deed. Reliance in this regard can be placed on **Hans Raji vs. Yosodanand, (1996) 7 SCC 122.** Para 10 of the judgment reads as under:-

So far as the applicability to the proviso to Section 68 is concerned, it must be noted that there was no occasion for the respondent to examine any attesting witness to the document in question as it was a Sale Deed which never required any attestation and even if some "marginal" witnesses had attested the document the document did not attract Section 68 of the Evidence Act which in term applies to the proof of execution of document required by law to be attested. It reads as under:

"68. Proof of execution of document required by law to be attested. - If a document is required by law to be attested, it shall not be used as evidence until shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence: Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."

Therefore, Section 68 would not cover such a



transaction. Hence there would remain no occasion to invoke the proviso to Section 68 with a view to finding out whether the execution of such a document was specifically denied by the adverse party or not. Consequently all the main contentions canvassed before the High Court which are repelled by the High Court cannot be said to be wrongly repelled.”

5.6. A registered sale deed carries the presumption of genuineness. The burden of proving that it is not genuine lies upon the person who denies its genuineness. Hence, the First Appellate Court should have followed this well settled legal principle, particularly when a certified copy of the sale deed along with the record from the office of the Registrar was produced. Then the burden shifted on the vendor who denied its genuineness.

5.7. Reason no.1 cited by the First Appellate Court is incorrect. Section 68 of the 1872 Act does not apply to registered sale deeds, as sale deeds do not require attestation by law. The execution of a registered sale deed is considered valid unless specifically denied by the executant. Section 114(e) of the 1872 Act provides that the court may presume that all the judicial and official acts have been regularly performed. The registered sale deed is required to be proved in accordance with Section 72 of the 1872 Act. In this case, the plaintiff, the vendee herself appeared in evidence. She also examined the Handwriting and Fingerprint Expert to prove the signatures of Sh. Brij Mohan, her vendor. The defendants did not lead any evidence to prove that Sh. Brij Mohan never executed the sale deed. Though, in the written statement, Sh. Birj Mohan denied the execution of the sale deed, however, he did not come forward to testify in the court. He is a party to both the suits. Hence, the court was required to draw an adverse inference



against the vendor (defendant-Brij Mohan) under Section 114 of the 1872 Act.

5.8. The second reason assigned by the First Appellate Court in para 22 of the judgment lacks substance because the registered sale deed carries a rebuttable presumption of genuinity which was required to be rebutted by either defendant no.1 or defendant no.2, namely, Smt. Santosh or Sh. Brij Mohan, however, they failed to rebut the same.

5.9. Reason no.3 assigned by the First Appellate Court is due to formulation of a wrong issue for adjudication. First of all the First Appellate Court has correctly observed that there is no bar in purchase of mortgage property from a mortgagor. Secondly, even if Sh. Brij Mohan had redeemed the mortgage, still the title of the property will continue to vest in Smt. Kanta who was a vendee from him. The court has failed to notice that Sh. Brij Mohan twice took loan, one was for construction, whereas the second time he took loan for repair. He took loan only with respect to the plot in dispute. The court has also overlooked that Sh. Brij Mohan sold his entire plot by 30.07.1991, because the first sale deed in favour of Smt. Santosh was executed on 07.12.1987, whereas the second sale deed in favour of Smt. Kanta was executed on 30.07.1991. He was an employee of the Syndicate Bank from whom he had borrowed the amount. Hence, even if he had repaid the loan subsequently, it would not make any difference to the rights of the Smt. Kanta as she was the purchaser of the property.

5.10. The fourth reason assigned by the First Appellate Court is incomprehensive. As already noticed, Smt. Kanta is a defendant in the first suit. Hence, the heavy burden i.e. the onus of proof lay upon Smt. Santosh,



the plaintiff in the first suit to prove that the sale deed executed in favour of Smt. Kanta was not genuine. Smt. Kanta proved the sale deed by examining the officials from the Registrar's office who brought the record in order to prove the certified copy of the registered sale deed. She herself appeared in evidence. She apart from examining the Handwriting and Fingerprint Expert to prove the signatures of Sh. Brij Mohan could not take the risk of summoning Sh. Brij Mohan in evidence because he had already denied execution of the sale deed. Moreover, Sh. Brij Mohan and Sh. Avtar Singh (husband of Smt. Santosh) were classmates. Hence, the burden of proving that the sale deed was not genuine lay upon Smt. Santosh to examine Sh. Brij Mohan to prove that the sale deed was never executed by him in favor of Smt. Kanta.

5.11. The fifth reason assigned by the First Appellate Court is a result of framing an incorrect issue. It shall be noted here that a registered sale deed carries a rebuttable presumption of correctness/genuineness. In the registered sale deed executed by Sh. Brij Mohan, there is a recital of total sale consideration of Rs.20,000/- which has already been received by him. Similar is the recital in the sale deed in favour of Smt. Santosh. The court has been impressed by the fact that Smt. Kanta has tried to prove that Sh. Brij Mohan was paid certain other payments. First of all those agreements were never exhibited. Secondly, at the most the aforesaid additional payments would prove that the sale deed was undervalued for saving the stamp duty, however, that would not itself be sufficient to hold that the sale deed itself is a suspicious and sham transaction. The sale deed was executed and registered in the year 1991. Sh. Brij Mohan never sought its annulment.



The suit was filed only by Smt. Santosh, who is a subsequent vendee. She has failed to prove that the sale deed was a sham transaction.

5.12. The last reason cited by the First Appellate Court is also result of the court below having failed to pose the correct question. The subsequent sale deed executed in favour of Smt. Santosh was executed in the year 2011. The property had already been sold by a sale deed executed prior to the aforesaid sale deed. In fact, Sh. Brij Mohan was left with no right, title or interest in the plot after he sold half of his share in favour of Smt. Santosh vide sale deed dated 07.12.1987, whereas remaining half in favour of Smt. Kanta on 30.07.1991. Hence, the sale deed executed on 13.10.2011, would not result in transferring any right because Sh. Brij Mohan had no right, title or interest in the property. The court has also erred in observing the Smt. Kanta failed to prove the genuineness of sale deed executed in her favour. As per the recital in the sale deed, she became owner of the property on execution of the sale deed. It has been recited that she has not only become an owner but was also delivered possession of the property.

6. **DISCUSSION BY THIS COURT:-**

6.1. In this case, the burden of proof became academic particularly when both the parties led their respective evidences. Both the parties had complete knowledge of the cases of the other party and they were required to lead evidence. The onus to prove that the sale deed was never executed by Sh. Brij Mohan shifted on Smt. Santosh or Sh. Brij Mohan once Smt. Kanta led evidence to prove the sale deed by producing a certified copy, examining the officials from the office of the Registrar, the Handwriting and fingerprint



Expert and her own deposition. Thereafter, the onus to prove that Sh. Brij Mohan never executed the sale deed shifted upon Smt. Santosh or Sh. Brij Mohan. They failed to lead cogent evidence to prove that the sale was not genuine. Moreover, the civil cases are required to be decided on the preponderance of evidence. In this case, the plaintiff was not required to prove her case beyond reasonable doubt that the sale deed was executed in her favour. While analyzing the case, the court should have also examined the question as to who has withheld the best evidence. In this case, Sh. Brij Mohan and Smt. Santosh withheld the best evidence. Sh. Brij Mohan could have appeared himself because he was the defendant or he could have been examined by Smt. Santosh because he was a classmate of her husband. Hence, adverse inference was required to be drawn against Smt. Santosh and Sh. Brij Mohan. In any case, Smt. Kanta discharged her burden by producing evidence which has already been elaborately discussed by this court.

7. **DECISION**

7.1 Keeping in view the aforesaid discussion, the judgment passed by the First Appellate Court is not sustainable being erroneous. Consequently, the judgment passed by the First Appellate Court is set aside and that of the trial court is restored.

7.2 The appeals stand allowed.

7.3 All the pending miscellaneous applications, if any, are also disposed of.

16th May, 2024

nt

Whether speaking/reasoned

Whether reportable

:YES/NO

:YES/NO

(ANIL KSHETARPAL)
JUDGE