



RSA-1683-1988(O&M)

1

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-1683-1988(O&M)

Date of decision : 05.08.2024

Dial Singh (deceased) through his LRs

... Appellant

Versus

Samund Singh (deceased) through his LRs and another

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHLPresent: Ms.Manveen Kahlon, Advocate
for the appellant.Mr.Raghav Soni, Advocate
for respondent no.1.**VIKAS BAHL, J.(ORAL)**

1. The plaintiff [appellant hereinafter referred to as “the plaintiff” (now represented by his legal representatives)] has filed the present regular second appeal against the judgment of the Ist Appellate Court, Amritsar dated 25.05.1988 vide which the appeal filed by defendant no.1-respondent no.1 (hereinafter referred to as “defendant no.1”) has been allowed and the suit filed by the plaintiff for possession of land measuring 79 kanals 10 marlas at village Jodh Singh Wala, Tehsil Patti, comprised in Khata no.15, Khatoni no.26, Killa nos. 93/6, 13/2, 14, 15, 16, 17, 18/1 and 94/1,2, 8/2, 9, 10 as per the jamabandi for the year 1981-82, has been dismissed. The present appeal has been filed under Section 41 of the Punjab Courts Act, 1918.



2. Brief facts of the case are that the plaintiff had filed a suit for possession on the plea that the plaintiff had purchased land measuring 79 kanals 10 marlas situated at village Jodh Singh Wala in an auction held on 09.06.1970 and had got the possession of the same thereafter. It is further the case of the plaintiff that about three years prior to the filing of the suit, which was instituted on 28.05.1985, defendant no.1 had forcibly occupied the suit land without any right, title or interest and upon enquiry, it was learnt by the plaintiff that defendant no.1 was claiming an alleged sale deed in his favour which was denied by the plaintiff and it was stated that the same was a result of fraud and misrepresentation. It was further pleaded that the sale deed was without consideration.

3. Defendant no.1 had filed written statement and had stated that the plaintiff had executed a registered sale deed dated 02.04.1981 and the factum of the said sale deed had been admitted by the plaintiff in a suit which the plaintiff had filed prior to the present one i.e. Civil Suit no.228 of 1983 instituted on 04.08.1983 and a copy of the plaint of said suit had been duly exhibited as Ex.D3. It was pleaded that the plaintiff was now trying to withdraw his admission by raising false pleas. It was further pleaded that there was no bar to sell the suit land and that the sale deed was for consideration and defendant no.1 had in fact further mortgaged a part of the suit land in favour of defendant no.2-bank.

4. Defendant no.2 had also filed a separate written statement and had submitted that the suit filed by the plaintiff was not within time and that the suit was not properly valued for the purpose of Court fee and

**RSA-1683-1988(O&M)****3**

jurisdiction and that the plaintiff had no locus standi to file the present suit as defendant no.1 was the owner in possession of the suit land and defendant no.2 was a bonafide mortgagee. It was averred that the suit was filed after three years of sanctioning of mutation and thus, was barred by limitation.

5. The learned trial Court vide order dated 15.09.1985 had framed the following issues:-

- “1. Whether the defendant has validly purchased the suit land vide sale deed dated 9.4.81? OPD
2. If issue no.1 is proved, whether the sale deed is the result of fraud and misrepresentation? OPP
3. Whether the plaintiff is estopped by his own act and conduct? OPP
4. Whether the plaintiff could not validly sell the suit land? OPP
5. Whether the defendant no.2 is a bonafide mortgagee of the portion of the suit land, if so, to what effect? OPP
6. Relief.”

6. The trial Court had decided all the issues in favour of the plaintiff and accordingly decreed the suit of the plaintiff.

7. Defendant no.1 had filed an appeal before the Ist Appellate Court and the Ist Appellate Court had reversed the findings on all the issues and had decided the same in favour of the defendant and against the plaintiff and allowed the appeal filed by defendant no.1. The suit of the plaintiff was dismissed and the judgment and decree of the trial Court was set aside.

8. A perusal of the judgment of the Ist Appellate Court would

**RSA-1683-1988(O&M)****4**

show that it was observed by the Ist Appellate Court that the plaintiff had not pleaded specifically the grounds of fraud and misrepresentation which were required to be pleaded and proved and thus, in the absence of the same, stray pleas taken that the sale deed was a result of fraud and misrepresentation cannot be entertained. It was observed that from the record it was apparent that the date on which the registered sale deed dated 02.04.1981 was executed, on the same date an agreement to sell (Ex.D2) was also executed between the same parties vide which it was agreed that defendant no.1 would sell the land measuring 10 kanals 11½ marlas situated in Patti in favour of the plaintiff and the factum of the said agreement to sell, which although was not admitted on behalf of the plaintiff nor was pleaded in the plaint, was proved from the fact that in the earlier suit filed by the plaintiff, the copy of which plaint has been exhibited as Ex.D3, the plaintiff himself had pleaded and had relied upon the agreement to sell dated 02.04.1981 and further in paragraph 2 of the said plaint Ex.D3, it was pleaded that an amount of Rs.20,000/-, which had to be paid by the plaintiff to defendant no.1 with respect to the said agreement to sell, was adjusted in consideration of the present said sale deed in favour of defendant no.1. It was observed that the total sale consideration in the said agreement to sell (Ex.D2) was Rs.30,000/-, out of which, the amount of Rs.20,000/- was adjusted vide present sale deed, thus, it could not be said that the sale deed was without consideration. It was further observed that the plaintiff could not escape from the said admission and would not be entitled to take up the plea that he had never executed any sale deed, as apart from the fact that he



had admitted the execution of the sale deed in the earlier suit, the said sale deed was a duly registered document before the Sub Registrar. With respect to the plea raised that the plaintiff was not entitled to sell the suit land within 20 years, it was observed by the Ist Appellate Court that no instructions/ notification restraining the plaintiff from selling the suit land within 20 years had been produced on record and moreover, the plaintiff could not take advantage of his own wrongs as he himself had sold the property to defendant no.1 and it was not even remotely proved that there was any fraud or misrepresentation regarding the same.

9. It is the said judgment of the Ist Appellate Court which has been challenged before this Court.

10. Learned counsel for the appellant has submitted that in the present case, no consideration had been paid to the plaintiff and thus, the alleged registered sale deed dated 02.04.1981 deserves to be set aside. It is further argued that it is the defendant no.1 who had resiled from the agreement Ex.D2 and thus, on the said ground also, the suit of the plaintiff should have been decreed and the judgment of the Ist Appellate Court deserves to be set aside.

11. Learned counsel for respondent no.1, on the other hand, has opposed the present appeal and has submitted that the arguments raised on behalf of the learned counsel for the appellant to the effect that it is the defendant no.1, who had resiled from the agreement is beyond pleadings as there is no plea regarding the same. It is submitted that in the plaint, there is no reference to any agreement to sell and that the agreement to sell has been

**RSA-1683-1988(O&M)****6**

produced by defendant no.1 as Ex.D2 and not by the plaintiff. It is further submitted that a false plea of non-execution of the sale deed has been taken in the present case by the plaintiff and the same being a false plea is proved from the averments made in the plaint (Ex.D3) in the earlier suit filed by the plaintiff, in which the factum of there being an agreement to sell (Ex.D2) also was averred by the plaintiff. Even with respect to non-payment of consideration, it is submitted that the finding of the Ist Appellate Court to the effect that the amount of Rs.20,000/- was adjusted at the time of the execution of the sale deed vis-a-vis the agreement to sell, is in accordance with law and deserves to be upheld. It is stated that the appellant had taken contradictory pleas and thus, his appeal should be rejected.

12. This Court has heard the learned counsel for the parties and has perused the paper book and is of the opinion that the two arguments raised by learned counsel for the appellant are meritless and deserve to be rejected for the reasons mentioned hereinafter.

13. In the present case, it is not in dispute that there is no challenge to the registered sale deed dated 02.04.1981 which has been duly exhibited as Ex.D1. In the plaint, the plaintiff had tried to make out a case that he never executed the sale deed and the thumb impressions on the same might have been obtained by defendant no.1 by fraud and misrepresentation. Even the factum of agreement to sell (Ex.D2) having been entered into between the parties for transferring land measuring 10 kanal 11 ½ marlas owned by defendant no.1 in favour of plaintiff had not been pleaded by the plaintiff.

The said two aspects as per the observations made by the Ist Appellate

**RSA-1683-1988(O&M)****7**

Court stand substantiated from the earlier suit filed by the plaintiff i.e. Civil Suit no.228 of 1983 which was instituted on 04.08.1983 against the present defendant no.1 in which relief had been sought by the plaintiff with respect to the land measuring 10 kanals 11½ marlas and in the plaint of the said suit, which has been duly exhibited as Ex.D3, in paragraph 2 of the same, it was admitted by the plaintiff that the total sale consideration with respect to the agreement to sell was Rs.30,000/- and out of the same, Rs.20,000/- was adjusted by virtue of the sale deed dated 02.04.1981 (Ex.D1) in favour of defendant no.1. Thus, in the earlier suit, the factum of execution of sale deed as well as agreement to sell was admitted by the plaintiff and also the factum of the consideration having been adjusted was also admitted by the plaintiff and the pleas now sought to be raised are contradictory to the pleas taken in the earlier suit. Moreover, the sale deed is a registered document as the same was registered before the Sub Registrar and thus, the mere plea that the plaintiff had not executed the same without even raising a specific challenge to the said sale deed, cannot be accepted. Further, the plea sought to be raised that there was no consideration for the execution of the sale deed and that the sale deed was not executed is contrary to the record. Even the argument to the effect that defendant no.1 had resiled from the agreement to sell (Ex.D2) is meritless and is of no consequence. The argument on behalf of the learned counsel for defendant no.1 to the effect that no plea regarding the said agreement to sell much less, of defendant no.1 resiling from the same, had been taken in the plaint could not be rebutted. It is further apparent from the record that it is the defendant no.1



RSA-1683-1988(O&M) 8

who had produced the agreement to sell (Ex.D2) on record and not the plaintiff. Moreover, the plaintiff had earlier filed the suit for permanent injunction Ex.D3 and has not filed a suit for specific performance of the agreement to sell till date in spite of the lapse of more than 44 years. Thus, both the pleas raised by the learned counsel for the plaintiff, cannot be made the basis for setting aside the judgment of the Ist Appellate Court, which is well reasoned and has been passed after taking into consideration all the relevant factors. There is no illegality or perversity or any error of law in the judgment of the Ist Appellate Court.

14. Keeping in view the abovesaid facts and circumstances, the present regular second appeal being meritless, deserves to be dismissed, the judgment of the Ist Appellate Court being in accordance with law deserves to be upheld and the suit filed by the plaintiff deserves to be dismissed. Thus, the present regular second appeal is dismissed and the judgment of the Ist Appellate Court is upheld and the suit filed by the plaintiff is dismissed.

15. Pending application, if any, stands disposed of in view of the above said order.

(VIKAS BAHL)
JUDGE

August 05, 2024
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No