

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

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RSA No.3520 of 2019 (O&M)**Reserved on : 22.02.2024****Date of Decision : 11.03.2024**

Umar Mohmmad

....Appellant

VERSUS

Fateh Mohammad

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Jai Bhagwan Sharma, Advocate for the appellant.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellant against the judgment and decree dated 12.01.2017 passed by the Trial Court and the judgment and decree dated 03.12.2018 passed by the First Appellate Court whereby his suit for declaration and permanent injunction has been dismissed.

2. The brief facts relevant to the present case are that the parties are both brothers. The plaintiff-appellant filed a suit averring therein that he is owner in actual physical possession to the extent of 1/3rd share i.e. land measuring 9 marlas forming part of Khewat No.146/136, Khatoni No.213, Khasra Nos.60(0-10), 61(0-17) situated within the revenue estate of village Alampur, Tehsil and District Faridabad. As per the plaintiff-appellant the defendant-respondent had got forged and fabricated a sale deed bearing document No.7699 dated 29.09.1983 and that its mutation No.2496 dated 04.04.2012 with future entries in the concerned revenue record are the

outcome of fraud, misrepresentation, collusion with the revenue officials, under concealment, stealthily and without the consent, knowledge and notice of the plaintiff-appellant and hence are liable to be cancelled, set aside and deleted from the concerned revenue record being illegal, unlawful, nullity and non-est in the eyes of law. It was averred that the suit property was the self-acquired property of the plaintiff-appellant having purchased it from Hussaina son of Med Khan vide sale deed dated 14.12.1978 for which mutation was sanctioned on 29.01.1979. It was further averred that the plaintiff-appellant was illiterate and was residing separately from the defendant-respondent since 1975 and that there had arisen no occasion of legal necessity to sell the suit property nor had any family settlement taken place for him to relinquish the suit property in favour of the defendant-respondent. The defendant-respondent filed his written statement raising the preliminary objections of maintainability, concealment of facts, cause of action, locus standi and court fees. It was averred in the written statement that the defendant-respondent was the absolute owner and in possession of the suit property on the basis of the registered sale deed dated 29.09.1983 without any break or interference from any corner in any manner. It was further submitted that infact the plaintiff-appellant was in great need of money and hence he showed his willingness to sell the suit property to the defendant-respondent and hence the suit property was sold to the defendant-respondent as per market rate and that now the plaintiff-appellant had become dishonest as the rates of land have increased and so the plaintiff-appellant wants to back out and grab the suit property of the defendant-respondent.

3. The Trial Court framed the following issues :

1. Whether the plaintiff is entitled for a decree of declaration, as prayed for ? OPP
2. Whether the plaintiff is entitled for a decree of permanent injunction, as prayed for ? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
4. Whether the plaintiff has no locus standi and cause of action to file the present suit ? OPD
5. Whether the plaintiff has concealed the real and material facts ? OPD
6. Relief.

4. The Trial Court vide judgment and decree dated 12.01.2017 dismissed the suit of the plaintiff-appellant holding inter-alia that he had failed to prove the commission of any fraud during execution of the sale deed dated 29.09.1983. Aggrieved by the said judgment and decree dated 12.01.2017 an appeal was preferred by the plaintiff-appellant which appeal was also dismissed vide judgment and decree dated 03.12.2018. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant would contend that the plaintiff-appellant had in 2007 taken a loan from the bank by mortgaging the suit property and had the suit property been actually sold in 1983 there was no question of any loan being sanctioned. It is also contended that the fact that the mutation qua the sale of 29.09.1983 was entered on 04.04.2012 also proves that there was no sale deed executed by the plaintiff-appellant.

6. Heard counsel for the plaintiff-appellant and perused the paperbook.

7. Both the Courts have reached concurrent findings of fact that the plaintiff-appellant had executed the sale deed dated 29.09.1983 in favour of the defendant-respondent. The mere fact that the mutation qua the sale deed was made many years later would not lead to a conclusion that the sale deed was sham or bogus or accentuated by fraud. Further, no witness from any bank was produced by the plaintiff-appellant to prove the mortgage of the suit property for availing a loan. The First Appellate Court found that *“It is not the case of the appellant that the sale deed Ex.P3 no where bears his thumb impressions. The sale deed is a registered document and the appellant had appeared before the Sub Registrar in order to execute the document. Generally the contents of document, which is to be registered, are read over by the Sub Registrar to the executant and the appellant has failed to prove that how the fraud was committed with him. The respondent had also examined the deed writer as DW4 and his testimony makes it clear that the sale deed was drafted and typed by him on the instructions of the appellant. The appellant cannot take any benefit from the fact that the sale consideration was not paid to him in the presence of Sub Registrar. Contents of the sale deed Ex.P3 clearly show that the sale consideration was already paid to the appellant”*. Regarding the argument of fraud, suffice is to observe that the plaintiff-appellant has not led any cogent evidence to establish any fraud. Even before this Court the counsel for the plaintiff-appellant is unable to point to any evidence from which it can be deduced that the defendant-respondent had played a fraud on the plaintiff-appellant. No other point was argued.

8. 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.

11.03.2024
Ankur

(ALKA SARIN)
JUDGE

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