

137

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1920-1992 (O&M)
Date of decision: 07.11.2024

Dilbagh Singh and others

...Appellants

Versus

Jasbir Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. M.L. Sarin, Sr. Advocate with
Ms. Himani Sarin, Advocate for the appellants.

Mr. N.P.S. Mann, Advocate and
Mr. R.P.S. Mann, Advocate for the respondent No.1/plaintiff.

VIKAS BAHL, J. (ORAL)

INDEX

1.	Challenge in the present appeal	Para 1	Page 1-2
2.	Background of the case	Paras 2-9	Pages 2-6
3.	Arguments on behalf of the appellants	Paras 10-13	Pages 6-10
4.	Arguments on behalf of respondent no.1/plaintiff	Paras 14-15	Pages 10-12
5.	Analysis and Findings	Paras 16-38	Pages 12-25

CHALLENGE IN THE PRESENT APPEAL

1. Defendant Nos.2 to 4 have filed the present appeal under Section 41 of the Punjab Courts Act, 1918. Challenge in the present appeal is to the judgment dated 11.09.1992 vide which the Ist Appellate Court had set aside the judgment and decree dated 02.12.1988 passed by the trial Court and had decreed the suit filed by the plaintiff/respondent



No.1 (presently represented by his LRs) for specific performance.

BACKGROUND OF THE CASE

2. Brief facts of the present case are that the respondent No.1/plaintiff (hereinafter to be referred as “the plaintiff”) had filed a suit for specific performance of agreement to sell dated 23.09.1985 pertaining to the land measuring 32 kanals 15 marlas which was situated in Village Bhala Pind, Tehsil Ajnala, District Amritsar. An alternative prayer was made for recovery of Rs.20,000/- (Rs.10,000/- being earnest money and Rs.10,000/- being damages thereon). The suit was filed on the averments that the suit land was owned by Mehar Singh, son of Wadhava Singh and after the death of said Mehar Singh, the same was inherited by defendant No.1-Gopal Kaur and that defendant No.1 entered into an agreement to sell in favour of the plaintiff on 23.09.1985 whereby she had agreed to sell the suit land for an amount of Rs.27,000/- and for the same, had received an amount of Rs.10,000/- as earnest money and the sale deed was to be executed on or before 15.01.1987. It was further averred that in case of a breach of the contract, defendant No.1 was to pay an amount of Rs.10,000/- as damages and thus, an alternative relief for damages was also sought in case the prayer for specific performance was not granted. In para 6 of the plaint, it was averred by the plaintiff that Village Bhala Pind was a very small place and the agreement dated 23.09.1985 was known to everybody and on 15.01.1987, the plaintiff came to know that defendant No.1 had sold the land in question to defendant Nos.2 to 4 i.e., the present appellants for a consideration of Rs.32,000/- and that the sale



deed in favour of defendants No.2 to 4 was null and void qua the rights of the plaintiff since defendant Nos.2 to 4 had notice of the agreement to sell executed by defendant No.1 in favour of the plaintiff. On the basis of the said averments, the plaint was drafted on 20.01.1987 and subsequently, the suit was filed on 23.01.1987.

3. A written statement was filed by defendant Nos.2 to 4 in which several preliminary objections including the objections with respect to locus standi, cause of action and the suit being not maintainable were raised. In para No.2 of the written statement, the agreement to sell was denied and it was further denied that any amount as earnest money was paid by the plaintiff to defendant No.1. Importantly, in para 6 of the written statement, it was specifically stated that the plaintiff belonged to Village Dalam which was situated at a distance of 3 kms from Village Bhala Pind, where the present appellants resided and where the land was also situated. It was further denied that defendant Nos.2 to 4 were in knowledge of the alleged agreement to sell in favour of the plaintiff and rather it was averred that the land was sold by defendant No.1 to defendant Nos.2 to 4 for an amount of Rs.32,000/- vide registered sale deed dated 22.11.1985 and that defendant Nos.2 to 4 were bona fide purchasers with consideration and without notice of any alleged agreement and it was stated that the sale in favour of the defendant Nos.2 to 4 was valid and legal. The said averments regarding defendant Nos.2 to 4 being bona fide purchasers were reiterated in para 12 and a prayer was made that the suit be dismissed.



4. Defendant No.1-Gopal Kaur had also filed a written statement wherein the case of the plaintiff was admitted and she had stated in para 12 that she had no objection in case the suit of the plaintiff as prayed for, was allowed. Replication was filed to the written statement filed by defendant Nos.2 to 4 and in para 6 of the replication, a simplicitor plea was taken that the averments made in the written statement were wrong and denied and that of the plaint were correct and reaffirmed and it was nowhere stated in the plaint that the sale deed dated 22.11.1985 was without consideration or that the sale was made collusively.

5. The trial Court had framed the following issues:-

- “1. Whether the plaintiff was always ready and willing and is still ready and willing to perform his part of the contract? OPP.*
- 2. Whether the plaintiff is entitled to specific performance of the contract of the sale dated 23.9.85? OPP.*
- 3. If issue No.2 is not proved, whether the plaintiff is entitled to recover Rs.20,000/- as earnest money/advance sale price and damages from defendant No.1? OPP.*
- 4. Whether the plaintiff has got no locus standi to file the present suit? OPD.*
- 5. Whether the plaintiff has got no cause of action? OPD.*
- 6. Whether the suit is not maintainable in the present form? OPD.*
- 7. Whether the defendants No.2 to 4 are bonafide purchaser for valuable of consideration and without notice? OPD.*
- 8. Relief.”*

6. The most important issue was issue No.7 which was to the



effect that whether defendant Nos.2 to 4/present appellants were bona fide purchasers for valuable of consideration and without notice. The said issue was decided in favour of the present appellants/defendant Nos.2 to 4 and against the plaintiff and while deciding the said issue, it was observed that execution of the sale deed dated 22.11.1985 (Ex.D1) was duly proved and even the plaintiff had admitted due execution of the said sale deed and that there was no reliable and trustworthy evidence to prove that the present appellants had knowledge of the agreement dated 23.09.1985. It was further observed that the plaintiff belonged to Village Dalam whereas the land in dispute was situated in Village Bhala Pind and the defendants were also residents of Village Bhala Pind and since, the defendants belonged to another village thus, it could not be said that they had knowledge of the agreement to sell in favour of the plaintiff and that no notice was ever served by the plaintiff on the defendant Nos.2 to 4 to the effect that there was an agreement to sell in his favour. In view of the finding on the abovesaid issue No.7, under issue No.2 and 3, the plaintiff was not held entitled to specific performance of agreement but was held entitled to recovery of Rs.10,000/- as earnest money and interest at the rate of 12% per annum from the date of the agreement till its realisation. Issue Nos.1, 4, 5 and 6 were however decided in favour of the plaintiff and against the defendants.

7. The plaintiff filed an appeal against the said judgment and decree dated 02.12.1988 and the Ist Appellate Court allowed the said appeal and set aside the judgment of the trial Court and decreed the suit of



the plaintiff for specific performance and observed that the plaintiff was entitled to specific performance on payment of balance sale consideration of Rs.17,000/- to the defendants and the same was to be deposited in the trial Court on or before 15.12.1992.

8. On a pointed query raised by this Court, learned counsel for the defendants has very fairly submitted that the said amount as per his instructions has not been deposited. It would be relevant to note that against the said judgment, the present appellants filed the present appeal and vide order dated 28.09.1992, a Coordinate Bench of this Court was pleased to admit the matter and issue notice regarding stay and in the meantime, the dispossession was stayed, although the operation/execution of the Ist Appellate Court's order was not stayed. The order dated 28.09.1992 is reproduced hereinbelow:-

*“Mr. HL Sarin, Sr. Advocate, with
Mr. Hemant Sarin, Advocate.*

Admitted.

Notice re: stay.

Stay dispossession in the meantime.

28.9.1992”

9. Furthermore, vide order dated 07.01.1993 the said stay order granted at the time of admission was made absolute and the said interim order is continuing till date.

ARGUMENTS ON BEHALF OF THE APPELLANTS

10. Learned senior counsel for the appellants while challenging the judgment of the Ist Appellate Court has submitted that the finding of



the Ist Appellate Court is illegal and perverse and thus, deserves to be set aside. It is submitted that issue No.7 which had been taken to be the most relevant issue, had been illegally reversed by the Ist Appellate Court on the basis of presumption and assumption. It is argued that the primary reason for setting aside the said issue was that the Ist Appellate Court was of the opinion that since no consideration was paid before the Sub-Registrar, thus, there was no proof of payment of consideration and thus, no consideration was paid and all the said facts showed connivance between the present appellants and Gopal Kaur and the same also showed that the present appellants had knowledge of the said agreement dated 23.09.1985. It is submitted that the finding on each of the abovesaid aspect is illegal, inasmuch as, the payment of consideration amount of Rs.32,000/- was never disputed by the plaintiff or by Gopal Kaur. For the said purpose, reference has been made to the pleadings, moreso, paragraph 6 of the plaint, paragraph 6 of the written statement as well as paragraph 6 of the replication. It is further submitted that the registered sale deed dated 22.11.1985 specifically records the fact that the amount of Rs.32,000/- has been paid and presumption of truth is attached to a registered document and thus, the onus was on the plaintiff to prove the contrary. In support of the said argument, learned senior counsel for the appellants has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Jamila Begum (D) through legal representatives vs. Shami Mohammad (D) through legal representatives*** reported as ***2019(2) SCC 727***. It is further submitted that as per the provisions of The Indian



Evidence Act, 1872, moreso, Section 91, no oral evidence contrary to the terms of the document is admissible.

11. It is submitted that in fact the payment of the consideration was not in dispute and was rather an admitted fact, which fact was apparent from the pleadings of the parties and was further fortified vide cross-examination of PW-1 wherein the said PW-1 had stated that “it is correct that they have got the sale deed registered for Rs.32,000/-”. It is stated that the admission of the parties is the best evidence against the said parties and on the said aspect, reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case titled as “***Narayan Bhagwantrao Gosavi Balajiwale vs Gopal Vinayak Gosavi and Others***” reported as ***AIR 1960 SC 100***. It is further argued that since there was no plea to the effect that the sale deed in favour of the present appellants was without consideration, thus, no objection on the said aspect could have been raised. In support of the said argument, reliance has been placed upon the judgment of privy council in ***AIR 1930 Privy Council 57(1)***. It is argued that at any rate, it did not lie in the mouth of the plaintiff, who was not privy to the sale deed, to raise a plea that there was no consideration as the said plea could have been raised only by Gopal Kaur, who was the seller. It is submitted that at any rate, none of the parties have raised the said plea and thus, the Ist Appellate Court had committed a grave error in considering an aspect which was never raised by any of the parties and was in fact, admitted by the parties.

12. It is submitted that on the basis of the said perverse finding, a



presumption had been raised that the present appellants were in collusion with Gopal Kaur. It is submitted that the said observation was based on surmises and conjectures, inasmuch as, there was no evidence much less, any pleading to show that there was any connivance between the said Gopal Kaur and the present appellants. It is submitted that in fact the said Gopal Kaur had filed the written statement in favour of the plaintiff and had also prayed that the suit of the plaintiff be decreed and thus, it is apparent that there was collusion between the plaintiff and the said Gopal Kaur. It is argued that even the fact with respect to the knowledge of the alleged agreement had been presumed by the Ist Appellate Court and the Ist Appellate Court had given a perverse finding without there being anything even remotely on record to show that defendants No.2 to 4 had any knowledge about the alleged agreement and the detailed finding of the trial Court on the said aspect had been perversely reversed. It is submitted that in case, the parties had disputed the payment of Rs.32,000/- then, in that situation, defendants No.2 to 4 could have led more evidence to show their capacity as well as to prove the factum of the payment and moreover, once the said fact of payment was admitted and was never disputed, then, the observation on the said aspect by the Ist Appellate Court is absolutely beyond pleadings and against law.

13. Additionally, it has been pointed out that in the present case it is not in dispute that the registered sale deed was executed in favour of defendants No.2 to 4 on 22.11.1985 (Ex.D1) yet the suit was filed by the plaintiff on 23.01.1987, after much delay. It is submitted that even the



agreement dated 23.09.1985 allegedly executed by defendant No.1 in favour of the plaintiff is highly suspicious as in spite of having paid more than 1/3rd amount, the period for execution of the agreement was kept upto 1 year and 4 months. It is submitted that the registered sale deed in favour of the present appellants has not been set aside till date and on account of the interim order passed in the year 1992, the present appellants are still in possession of the suit property and thus, it would be highly inequitable to deprive the present appellants of the property which they have bonafidely purchased from defendant No.1. It is submitted that the judgment of the Ist Appellate Court, thus, deserves to be set aside and the judgment of the trial Court deserves to be upheld.

ARGUMENTS ON BEHALF OF RESPONDENT NO.1/PLAINTIFF

14. Learned counsel for the plaintiff-respondent No.1 (contesting respondent) has opposed the present appeal and has submitted that the judgment of the Ist Appellate Court is in accordance with law and deserves to be upheld. It is submitted that since defendants No.2 to 4 had raised the plea of being bona fide purchasers, thus, it was for defendants No.2 to 4 to prove that the consideration had been paid by defendants No.2 to 4 to defendant No.1 and since there was no evidence on the said aspect, thus, the Ist Appellate Court had rightly found that the said sale deed was executed only to defeat the rights of the plaintiff. It is submitted that a perusal of the agreement dated 23.09.1985 would show that the same had been attested by Darshan Singh, Panch and Bakshish, Nambardar, who are residents of Village Bhala Pind, where the



defendants reside and once the Panch and Nambardar of the said village had attested the document then, it naturally flows that the factum of the agreement was well known in the said village.

15. It is submitted that the reliance sought to be placed upon the admission made by PW-1 to the effect that he had stated that it was correct that the present appellants had got the sale deed registered for Rs.32,000/- is misplaced, inasmuch as, the said PW-1 had only admitted the fact that was stated in the sale deed, since the sale deed was not in dispute but had not admitted that actually defendants No.2 to 4 had paid Rs.32,000/- to defendant No.1. It is further submitted that even the recital in the sale deed is proved to be false, inasmuch as, in the sale deed it has been mentioned that the possession had been given to defendants No.2 to 4 whereas the said possession was never given on or before 22.11.1985 and was in fact subsequently taken by defendants No.2 to 4 in the year 1986 and in order to substantiate the said plea, learned counsel for the respondent No.1 has referred to Mark 'X' which is FIR No.20 dated 18.01.1986 under Sections 427, 447 and 34 IPC and which was registered by one Ajit Singh, son of Mehar Singh, resident of Village Bhala Pind, in which he had alleged that defendants No.2 to 4 had ploughed the said field and thus, the counsel for respondent No.1 has submitted that the recital in the sale deed does not reflect the correct position. It is also submitted that in the sale deed there is no recital to the effect that the land is free from encumbrances and it had only been mentioned that there is no mortgage on the said land. It is argued that from the same it is apparent



that the present appellants are not bona fide purchasers and thus, issue No.7 has been rightly decided in favour of the plaintiff and the said finding of the Ist Appellate Court deserves to be upheld.

ANALYSIS AND FINDINGS

16. This Court has heard learned senior counsel for the appellants and learned counsel for contesting respondent No.1 and is of the opinion that the judgment of the Ist Appellate Court is perverse and contrary to settled law and thus, deserves to be set aside and the judgment of the trial Court deserves to be upheld for the reasons which are enumerated hereinafter.

17. It has been rightly observed by the 1st Appellate Court that the fate of the case hinges on the finding of Issue No.7 which is to the effect that “whether the defendants No.2 to 4 are bonafide purchaser for valuable of consideration and without notice?OPD.”

18. The trial Court after considering the entire evidence on record had observed that defendants No.2 to 4 were bona-fide purchasers for consideration without notice of the alleged agreement. The relevant portion of the finding on the said aspect is reproduced herein below: -

“15. From the sale deed Ex. D. 1 execution of which stands proved from the testimony of Krishan Partap and Uttam Singh it is fully established that Gopal Kaur has sold the land in dispute to defendants Balraj Singh and others. Even plaintiff himself admitted that Gopal Kaur has sold the land in dispute to Balraj Singh and others. Now the question for determination is whether the defendants have the knowledge of the agreement in favour of the plaintiff or not. There is no



reliable and trustworthy evidence to prove that the defendants have knowledge of this agreement. Balraj Singh, defendant deposed in clear terms that they have no knowledge about the agreement in favour of the plaintiff. They have also examined one Parnam Singh of village Bhalla Pind. According to him the population of their village is about 7/8 thousands and Gopal Kaur did not execute any agreement. The onus is, therefore, now shifted on the plaintiff to prove that defendants have knowledge of this agreement. Admittedly, the plaintiff belongs to village Dalam whereas the land in dispute is situated in village Bhalla Pind. The vendee defendant also belong to village Bhalla Pind. Since the defendants belong to another village it therefore cannot be said that they have knowledge of the agreement in favour of the plaintiff. No notice was ever served by plaintiff on the defendants that there is an agreement in his favour. No witness has been produced by the plaintiff in whose presence he informed the defendants about his agreement. The vague testimony of Ajit Singh that it has come to the knowledge of the villagers that there is agreement in favour of the plaintiff is not sufficient to hold that the defendants have knowledge of the agreement. He himself admitted that he did not inform the defendants about the agreement. This witness could not tell as to from whom he had come to know as to how the villagers have come to know about the agreement. He himself has not stated as from whom he came to know about the agreement. Therefore, no reliance can be placed on his vague testimony. In these circumstances I am of the opinion that defendants cannot be said to be in the knowledge of the agreement in favour of the plaintiff and therefore they are proved to be bonafide purchasers for consideration without notice and issue is decided in favour of the defendants.”



19. A perusal of the above finding would show that it had been observed that the sale deed (Ex.D1) had been duly proved on record by the present appellants as they had examined Krishan Partap scribe and the attesting witness Uttam Singh and the factum of the execution of sale deed was not even disputed by the plaintiff. On the aspect of the knowledge, it was observed that Balraj Singh, defendant, had deposed in clear terms that he had no knowledge about the agreement to sell and it was observed that the plaintiff belonged to village Dalam, whereas, the land in dispute was situated in village Bhala Pind and the present appellants also belonged to Village Bhala Pind and since they did not belong to the same village as that of the plaintiff, thus, it could not be said that defendants No.2 to 4 had knowledge about the alleged agreement in favour of the plaintiff, moreso, when there was no positive evidence to prove the same. It was further observed that no notice was ever served upon the defendants No.2 to 4 informing them about the said agreement.

20. The said finding of the trial Court has been reversed by the Ist Appellate Court on the following three observations: -

- (i) Defendants No.2 to 4 had failed to prove that the consideration was paid by defendants No.2 to 4 to defendant No.1.
- (ii) Since they had failed to prove the said consideration, thus, the same showed that defendants No.2 to 4 had connived with Gopal Kaur (defendant No.1) and had got the sale deed executed. Thus, on the basis of presumption and assumption,



the said observations were made.

- (iii) It was observed that on account of the fact that the consideration had not been paid, it was apparent that defendants No.2 to 4 had knowledge of the prior agreement.

21. From the finding of the Ist Appellate Court, it is apparent that after having made observations on the first aspect i.e.,(i), the other two aspects i.e., (ii) and (iii) have been presumed. Thus, the primary question to be considered by this Court is as to whether the observations on the first aspect i.e., (i) made by the Ist Appellate Court are in accordance with law or not and with respect to the said aspect, this Court is of the opinion that the same are not in accordance with law as per the reasons which have been enumerated herein after.

22. From the pleadings and evidence, it is proved beyond doubt that there was no dispute on the aspect as to whether the consideration had been paid by defendants No.2 to 4 to defendant No.1. In fact, the said aspect had been admitted. In order to substantiate the same, it would firstly be relevant to refer to the pleadings of the parties. In para 6 of the plaint, it had been stated by the plaintiff that he had come to know that defendant No.1 had sold the land in dispute to defendants No.2 to 4 for a consideration of Rs.32,000/- and the only aspect which the plaintiff had averred to say that the sale deed was null and void was to the effect that as per him the said sale had been executed in spite of defendants No.2 to 4 having knowledge of the alleged agreement to sell. There was no averment in the entire plaint to even remotely state that the sale deed



dated 22.11.1985 was without consideration. Para 6 of the plaint is reproduced herein below: -

*“6. That village Bhala Pind is a very small one and the agreement dated 23.9.1985 was known to everybody and had a wide publicity in the village. Defendants No.2 to 5 were in the knowledge of the agreement. **On 15.1.1987 the plaintiff came to know that defendant 1 had sold the land in dispute to defendants No.2 to 4 for Rs.32,000/-.** The sale in favour of defendants No.2 to 4 is illegal, null and void qua the rights of the plaintiff because defendants No.2 to 4 had a notice of the agreement of sale executed by defendant No.1 in favour of the plaintiff.”*

23. In para 6 of the written statement filed on behalf of defendants No.2 to 4/present appellants, it was specifically averred that the suit land had been purchased by defendants No.2 to 4 for a sale consideration of Rs.32,000/-, vide registered sale deed dated 22.11.1985 and that the present appellants were bona fide purchasers with consideration and without notice of any alleged agreement and that the sale deed in their favour was valid. Para 6 of the said written statement is reproduced herein below: -

*“6. That para 6 of the plaint is vehemently denied being incorrect because the plaintiff belongs to V. Dalam which is situated at a distance of 3 Kms from V. Bhalapind. It is further denied that the alleged agreement if any was to the knowledge of the replying defendants. It is strange enough that the total number of defendants is four while in para 6 of the plaint it is mentioned that defendants no.2 to 5 were in knowledge of the alleged agreement. **It is to be mentioned here that the defendant No.1 sold the suit land for an amount of***



Rs.32,000/- as per registered sale deed dated 22/11/85 and the replying defendants are bonafide purchasers with consideration and without notice of any alleged agreement. The sale of the suit property in favour of replying defendants is valid, legal and the replying defendants have become the owners of the suit land and as such they are in possession of the suit property.”

24. In the replication filed on behalf of the plaintiff to the written statement filed by defendants No.2 to 4 in response to para 6, it was simply stated that the same was wrong and hence denied and that the averments of the plaint were correct and reaffirmed. Para 6 of the replication is reproduced hereinbelow: -

“6. That para six of the written statement is wrong and hence denied and that of the plaint is correct and reaffirmed.”

25. In the said para or even in the entire replication, there was not even a whisper that no consideration had been paid by defendants No.2 to 4 to defendant No.1 at the time of execution of the sale deed. It would also be relevant to note that defendant No.1-Gopal Kaur, vendor, had although admitted the case of the plaintiff and had also stated that the suit filed by the plaintiff be decreed, which does in fact show collusion between the plaintiff and the said defendant No.1, but she had nowhere raised the plea that the sale consideration was not paid by defendants No.2 to 4 to defendant No.1 nor there was any pleading by any of the parties to the effect that the recital in the sale deed, which is a registered document, was incorrect or false.

26. In addition to the above pleadings, PW1 Gurbachan Singh-



plaintiff both in his examination-in-chief as well as in his cross-examination had not denied the fact that Rs.32,000/- was paid by defendants No.2 to 4 to defendant No.1, rather had stated “it is correct that they have got the sale registered for Rs.32,000/-”. Even in the examination-in-chief, the said PW1 had stated that defendant No.1 had executed the sale deed after having received more money from defendant No.2. Even a perusal of the sale deed (Ex.D1), which is a registered document, would clearly show that it had been specifically recorded in the said sale deed that the land in question had been sold by defendant No.1 to defendants No.2 to 4 for an amount of Rs.32,000/- (half of which comes to Rs.16,000/-) which amount had been received by defendant No.1. The mere fact that at the time of registration of the sale deed no amount was paid would not mean that no money had been paid by defendants No.2 to 4 to defendant No.1. Since the said aspect was not disputed and was rather admitted in the case, there was no need for the present appellants to lead any further evidence to show the aspect of payment. It is a matter of settled law that the facts admitted need not to be proved and admission is the best evidence against the party making the same. In this regard, reference can be made to the judgment of the Hon'ble Supreme Court in the case of *Narayan Bhagwantrao Gosavi Balajiwale (supra)*, in which the Hon'ble Supreme Court in para 12 has stated that the admission is the best evidence that an opposing party can rely upon, and, although it is not conclusive, it is decisive of the matter, unless the same is successfully withdrawn or proved to be erroneous. In



the present case, it is a conceded position that the said admissions and pleadings have neither been shown to be erroneous nor have been withdrawn.

27. The Hon'ble Supreme Court in the case of ***Jamila Begum (Dead) Through Legal Representatives (supra)*** had observed that a registered document carries with it a presumption that it was validly executed and it is for the party challenging the genuineness of the transaction to show that the transaction is not valid in law. The relevant part of the said judgment is reproduced herein below: -

“xxx xxx xxx

16. *Sale deed dated 21-12-1970 in favour of Jamila Begum is a registered document and the registration of the sale deed reinforces valid execution of the sale deed. A **registered document carries with it a presumption that it was validly executed. It is for the party challenging the genuineness of the transaction to show that the transaction is not valid in law.** In [Prem Singh v. Birbal](#) (2006) 5 SCC 353, it was held as under:- (SCC pp 360-61, para 27)*

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.”

The above judgment in Prem Singh's case has been referred to in [Vishwanath Bapurao Sabale v. Shalinibai Nagappa Sabale](#) (2009) 12 SCC 101.

17. *The contention of the respondent-plaintiff is that at the time of the execution of the sale deed, Wali Mohd. was*



mentally weak and therefore, he was not in a position to understand and that the sale deed was not executed out of his free will and volition. To substantiate their case, respondent No.1-plaintiff has examined Dr. Wasim (PW5) who has stated that he has treated Wali Mohd. from the period 15-11-1970 to 25-12-1970 and produced the medical certificate, Ext.50 Kha. From the evidence of Dr. Wasim (PW5) and from his medical certificate, Ext.50 Kha., respondent-plaintiff has thus tried to show that at the time of the execution of the sale deed, Wali Mohd. was not in such a position to apply his mind and understand the contents of the sale deed.”

28. In the present case, as has been stated herein above, in the registered sale deed there was a specific reference that the consideration of Rs.32,000/- had been paid by defendants No.2 to 4 to defendant No.1 and there was no challenge to the recitals of the said sale deed and the presumption attached to the registered document as well as the recital to the registered document has not been even remotely rebutted. Moreover, even the pleadings and evidence support the recital in the sale deed. Furthermore, Gopal Kaur had not raised any grievance that the sale consideration had not been paid to her and thus, the entire basis of the Ist Appellate Court for setting aside the well reasoned judgment of the trial Court is baseless and based on presumption and assumption.

29. Another reason for setting aside the finding of the Ist Appellate Court on the aspect of consideration would be the settled proposition of law that no evidence/argument without pleadings is admissible. In the said regard, reference can be made to the judgment of



the Privy Council in the case of ***Siddik Mahomed Shah Vs. Mt. Saran and others, reported as AIR 1930 Privy Council 57(1)*** in which it has been specifically observed that no amount of evidence can be looked into upon a plea which was never raised. Reference can also be made to the judgment of Hon'ble Supreme Court in case titled as “***Prataprai N. Kothari Vs. John Braganza, reported as (1999) 4 Supreme Court Cases 403***”, in which, it has been observed by the Hon'ble Supreme Court that it is settled law that in the absence of any plea, no evidence is admissible. In the present case, as has been stated herein above, there was no plea that the sale deed dated 22.11.1985 was without consideration and thus, no evidence / argument on the said aspect was admissible and the plaintiff is estopped from raising such a plea.

30. On the basis of this abovesaid observations, the finding of the Ist Appellate Court to the effect that there was no consideration paid to the vendor at the time of registration of the sale deed are unsustainable. Once, the observation on the said aspect have been found to be unsustainable, the other findings of the Ist Appellate Court also deserve to be set aside as the same are based on surmises and conjectures and have been given only on the basis of finding given with respect to the aspect of consideration.

31. Additionally, it would be relevant to note that as far as the second aspect (i.e., point No.(ii)) to the effect that there was collusion between the defendants No.2 to 4 and and Gopal Kaur is concerned, it is relevant to note that apart from the fact that there was no evidence or



pleadings to the said effect, the said Gopal Kaur (defendant No.1) in her written statement had admitted the claim of the plaintiff and in para 12 of her written statement had further stated that she had no objection in case the suit of the plaintiff as prayed for was decreed. Para 12 of the said written statement filed by defendant No.1 is reproduced herein below: -

*“Gurbachan Singh Versus Gopal Kaur and
others*

(Suit for specific performance)

***Written statement on behalf of defendant No.1 Gopal
Kaur.***

xxx xxx xxx

***12. That para 12 of the plaint is also correct. It is
submitted that the replying defendant has no objection if the
suit of the plaintiff is decreed as prayed for, but the parties be
left to bear their own costs.”***

32. It is surprising to note that in spite of the said pleadings and without any evidence, the Ist Appellate Court had chosen to make observations that there was connivance between defendants No.2 to 4 and defendant No.1. In case, there was any such connivance, then, defendant No.1 would have opposed the suit of the plaintiff and would have taken pleas denying the agreement to sell instead of admitting the claim of the plaintiff and stating that the suit of the plaintiff be decreed. In fact, the collusion apparently appears to be between the plaintiff and defendant No.1.

33. The observations on the third aspect i.e., (iii) to the effect that defendants No.2 to 4 had the knowledge of the alleged agreement is again



based on surmises and conjectures. The detailed finding of the trial Court which has been reproduced herein above on the said aspect has not been taken into consideration by the Ist Appellate Court. The fact that the plaintiff belonged to a separate village and the defendants were residing in a separate village and also the fact that there was no trustworthy evidence to show that defendants No.2 to 4 had any knowledge of the agreement was not taken into consideration by the Ist Appellate Court while making the said observations. The counsel for the respondent No.1-plaintiff has tried to supplement the observations of the Ist Appellate Court but the same would not call for dismissing the present appeal. Moreover, none of the aspects which have been highlighted by the learned counsel for the respondent No.1-plaintiff weighed with the Ist Appellate Court in reversing the finding of the trial Court.

34. The reliance sought to be placed by learned counsel for the respondent No.1 on the FIR (Mark 'X') is baseless. Firstly the said document (Mark 'X') has not been duly exhibited on the record as the same is only a marked document and thus, cannot be looked into. Moreover, it has not been disputed that there is no further document to show as to in whose favour the criminal proceedings ultimately culminated and as per settled law, mere registration of a FIR cannot be taken as an adjudication on the fact that defendants No.2 to 4 were not given possession of the land at the time of the sale deed. Thus, the document Mark 'X' is completely irrelevant for the purpose of adjudication of the present case. On the aspect of there being no mention



of any encumbrances in the sale deed (Ex.D1), suffice it to say, it had been specifically recorded in the sale deed that the property was not mortgaged and the recitals in the sale deed are in accordance with the settled practice and support the case of defendants No.2 to 4, inasmuch, the factum of possession having been given and consideration having been paid had been specifically recorded in the sale deed, and it is the said recitals which are relevant for consideration in the present case.

35. Apart from the above, it would be relevant to note that the present appeal was filed in the year 1992 and the matter was admitted and dispossession of the present appellants was stayed, which interim has continued since 1992 till date. Thus, the present appellants have continued to enjoy the ownership and possession of the suit property. On the other hand, the plaintiff has also been duly compensated by the trial Court, inasmuch as, an amount of Rs.10,000/-, which as per the case of the plaintiff he had paid as earnest money, had been ordered to be returned to him with interest at the rate of 12% per annum from the date of agreement till its realisation.

36. It would be relevant to note that the present Regular Second Appeal has been filed under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 of CPC and that in paragraph 27 of the judgment of the Constitutional Bench (Five Judges Bench) of the Hon'ble Supreme Court in the case of ***Pankajakshi (dead) through legal representatives and others Vs. Chandrika and others and other connected matters*** reported as ***(2016) 6 Supreme Court Cases 157***, it was



observed that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force. Section 41 of the Punjab Courts Act provides that an appeal would lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the grounds mentioned therein and one such ground, i.e., ground No.(a) is when the decision is contrary to law or to some custom or usage having the force of law. The finding of the Ist Appellate Court, as has been discussed hereinabove, has been found to be contrary to settle law and thus, deserves to be set aside.

37. Keeping in view the abovesaid facts and circumstances, the present appeal is allowed and judgment of the Ist Appellate Court dated 11.09.1992 is set aside and judgment of the trial Court dated 02.12.1988 is upheld.

38. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

07.11.2024

Davinder Kumar/Pawan/Naresh

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No