



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

109

RSA-2479-1994 (O&M)

Date of Decision: 13.05.2024

Jandho (deceased) through LRs

.....Appellant

Versus

Duli Chand (deceased) through LRs and Ors.

.....Respondents

CORAM: HON'BLE MR.JUSTICE ANIL KSHETARPAL

Present: Ms. Rashi Choudhary, Advocate, and
Mr. Karanvir Hooda, Advocate, for the appellant.

Dr. Anmol Rattan Sidhu, Senior Advocate, with
Mr. G. S. Dhillon, Advocate, for the respondents.

ANIL KSHETARPAL. J.

(1) In this regular second appeal, the plaintiff No.1 assails the correctness of the judgment of the first appellate Court which in turn has reversed the judgment of the trial Court.

(2) On 29.03.1986, plaintiff No.1 along with her daughter Savitri filed a suit for the grant of decree of declaration alleging that on the pretext of executing a mortgage deed, their thumb impressions have been obtained on the sale deed.

(3) In order to comprehend the issues involved in the present case, the relevant facts in brief are required to be noticed. Late Sh.Shankar son of Sh.Dhani Ram was owner of the property. During his life time, he mortgaged the property in order to secure the repayment of loan. After his death, the aforesaid mortgaged land was redeemed by the plaintiffs namely his widow and daughter. Subsequently, the plaintiff No.1 mortgaged some

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part of property in favour of Neki Ram, Nanda Ram, and Sewa Ram etc. On 08.06.1977, the plaintiffs executed the registered sale deed. Subsequently, they filed suit after a passage of 9 years from the date the sale deed was executed claiming that the aforesaid sale deed is result of fraud, undue influence and mis-representation. Defendants contested the aforesaid suit and alleged that the sale deed was executed in the presence of Harphool Singh who was husband of plaintiff No.2 and son-in-law of plaintiff No.1. It was alleged that the plaintiffs were under immense pressure for redeeming the mortgage loan, hence, the sale deed was executed and the defendants have not played fraud on the plaintiffs.

4. The trial Court decreed the suit while assuming that the plaintiffs are *Parda Nashin* ladies and also they are illiterate. The first appellate Court has reversed the judgment and decree passed by the trial Court. It has been found that the plaintiffs have failed to lead sufficient evidence to prove that the defendants have committed fraud against them.

5. Heard learned counsel representing the parties at length and perused the paper book along with scanned copy of the lower Court record .

6. Learned counsel representing the appellants submits that the word '*Parda Nashin*' does not literally signify that they cover themselves with a veil or live behind a curtain. She submits that the plaintiffs are illiterate ladies and respondent is the *Sarpanch* of the village, hence, there is sufficient evidence to prove that the sale deed was executed by misrepresentation and undue influence. She further submits that the sale consideration was also inadequate as it was not commensurate to the market

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value, hence, the first appellate Court had erred in reversing the judgment of the trial Court.

7. *Per contra*, learned counsel representing the respondents submits that the sale deed was executed in the presence of Harphool Singh who is closely related to the plaintiffs. Plaintiff No.1 purchased the stamp papers for the execution of the sale deed on the previous day whereas the sale deed was scribed on the next date. He further submits that the sale deed was executed in the presence of Lambardar and Chandgi, witness to the sale deed who have deposed that the parties have agreed to sell and not mortgage the suit land.

8. This Court has considered the written submissions and also the arguments raised by the learned counsel representing the parties.

9. It is the plaintiffs who came to the Court after a period of 9 years to challenge the registered sale deed. Heavy burden lay upon them to prove that the sale deed was result of fraud, undue influence or mis-representation. They withheld the best evidence. They failed to examine Harphool Singh, who was admittedly present at the time of execution of the sale deed; he is the son-in-law of plaintiff No.1. There is no reason why he was not examined. It is evident that the plaintiffs had sufficient exposure of dealing with the immovable property. They redeemed the mortgaged land which was mortgaged by husband of the plaintiff No.1. Subsequently, they mortgaged the land in favour of various persons from time to time including Sh.Neki Ram, Sh. Sewa Ram, Sh.Nanda Ram etc.

10. It is the plaintiffs' case that they were required to repay the loan in order to redeem the land. In fact, it has come on record that on

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08.09.1977, they paid Rs.30,000/- to redeem the mortgage. Furthermore, the plaintiffs had admitted receipt of Rs.18,000/- at the time of execution of the sale deed. In these circumstances, plaintiffs had sufficient exposure and hence, in absence of concrete evidence, they cannot claim that there was misrepresentation or fraud committed on the part of defendants. In fact, the plaintiffs while appearing in evidence admitted that she purchased the stamp papers a day prior i.e. 07.06.1977, whereas the sale deed was executed on 08.06.1977.

11. Keeping in view the aforesaid facts and discussion, this Court does not find it appropriate to interfere with the findings of fact given by the First Appellate Court.

12. The Regular Second appeal stands dismissed accordingly.

13.05.2024
anil

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether Reportable:	Yes/No