

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

114

RSA No.4771 of 2019 (O&M)

Reserved on : 23.01.2024

Date of Decision: 08.02.2024

SUKHWATI AND ANOTHER

....Appellants

VERSUS

BIRMATI AND OTHERS

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sumit Gupta, Advocate for the appellants.

ALKA SARIN, J.**CM-13580-C-2019**

For the reasons mentioned therein, the application is allowed and the delay of 6 days in refiling the appeal is condoned.

RSA-4771-2019

1. The present appeal has been preferred by the defendant-appellants against the judgment and decree dated 30.07.2016 passed by the Trial Court and the judgment and decree dated 01.04.2019 passed by the First Appellate Court decreeing the suit filed by the plaintiff-respondents.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondents filed a suit for declaration and permanent injunction averring that they were owners in possession of the suit land mentioned in para no.1 of the plaint to the extent of 160/1069 share i.e. 8 Kanals vide sale deed no.570 dated 14.06.2007 and that the defendant-appellants have no concern with the same and have no right, title or interest therein and release deed no.690 dated 13.08.2009 and mutation no.941 dated 17.09.2009 are liable to be set aside being wrong, illegal, null and void to the extent of share of the

plaintiff-respondents and further the defendant-appellants be restrained from alienating, dispossessing and interfering in the peaceful possession of the plaintiff-respondents in the suit land. As per the plaintiff-respondents the defendant-appellant No.2 sold his land to the extent of 160/1069 share i.e. 8 Kanals to the plaintiff-respondents vide sale deed no.570 dated 14.06.2007 but the mutation could not be entered by the plaintiff-respondents and that they were in physical possession of the suit land since the time of execution of the sale deed and were using the same. It was further averred that on 13.08.2009 the defendant-appellant No.2 executed a release deed No.690 in favour of his wife, the defendant-appellant No.1, of land measuring 53 Kanals 9 Marlas including the suit land which had already sold to the plaintiff-respondents. Based on the illegal release deed, mutation No.941 was sanctioned in favour of the defendant-appellant No.1 on 17.07.2009. It was submitted that the illegal release deed and the illegal mutation are null and void and not binding on the right of plaintiff-respondents and are liable to be set aside. On notice, the defendant-appellants appeared and filed their written statement taking preliminary objections regarding locus standi, cause of action, maintainability, not approaching to the court with clean hands, non-joinder of necessary parties, limitation, non-payment of consideration amount and that the sale deed is a result of fraud. It was submitted that the defendant-appellant No.2 never executed a sale deed in favour of the plaintiff-respondents; that defendant-appellant No.2 was a drug addict and the plaintiff-respondents, by taking undue advantage of the drug addiction, got the alleged sale deed executed but it was not a mental and conscious act of defendant-appellant No.2; that defendant-appellant No.2 was not entitled to sell the suit land as it was ancestral property and defendant-appellant No.2

had no right, title and interest to alienate the same and even in the revenue record the defendant-appellant No.2 is shown as Karta; the plaintiff-respondents never paid any consideration and no possession was handed over to them. The plaintiff-respondents filed a replication.

3. On the basis of the pleadings of the parties the following issues were framed :

- “1. Whether plaintiff is entitled for decree for declaration to the effect that plaintiffs are owner in possession to the extent of 8 marla over the suit land mentioned in para no. 1 of the plaint ? OPP*
- 2. Whether release deed no.690 dated 13.08.2009 and mutation no.941 dated 17.09.2009 is liable to be set aside being wrong, illegal, null and void ? OPP*
- 3. Whether plaintiffs are entitled for decree for permanent injunction as prayed for ? OPP*
- 4. Whether sale deed no.570 dated 14.06.2007 is result of fraud and undue advantage of drug addiction of defendant no.1 ? OPD*
- 5. Whether the suit of the plaintiff is not maintainable in the present form ? OPD*
- 6. Whether plaintiff has affixed less court fee on the present plaint ? OPD*
- 7. Whether present suit is liable to be dismissed for non- payment of consideration amount ? OPD*
- 8. Relief”.*

4. The Trial Court decreed the suit of the plaintiff-respondents vide judgment and decree dated 30.07.2016. Aggrieved by the same an appeal was preferred by the appellant-defendant No.1 which appeal was dismissed vide judgment and decree dated 01.04.2019. Hence, the present regular second appeal.

5. Learned counsel for the defendant-appellants has contended that both the Courts below have erred in decreeing the suit of the plaintiff-respondents. It was argued that the sale deed in question is the outcome of drug addiction habit of the defendant-appellant No.2 and was not executed in proper mental state. It is also argued that the plaintiff-respondents failed to prove that the sale consideration was passed in favour of the vendor.

6. I have heard learned counsel for the defendant-appellants.

7. Both the Courts below have held the sale deed Ex.PW1/B was validly executed. It was a registered document mentioning receipt of consideration by the defendant-appellant No.2 and passing of possession to the plaintiff-respondents. Defendant-appellant No.2 did not step into the witness box. Nothing has been pointed out to show that the defendant-appellant No.2 was not in a fit mental condition at the time of execution of the sale deed Ex.PW1/B. Learned counsel for the defendant-appellants has not been able to convince this Court that the findings recorded by the Trial Court and the First Appellate Court are erroneous in any manner. No other point was argued.

8. It needs to be mentioned here that defendant-appellant No.2 did not file an appeal against the judgement and decree of the Trial Court decreeing the suit of the plaintiff-respondents. The appeal before the First Appellate Court was only filed by the defendant-appellant No.1 and in the said appeal the defendant-appellant No.2 was arrayed as respondent No.5. The said appeal was dismissed. Having accepted the judgement and decree of the Trial Court and not filing any appeal against the same, the defendant-appellant No.2 cannot challenge the judgement and decree of the Trial Court or the First Appellate Court before this Court.

9. 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.

08.02.2024
D.Bansal

(ALKA SARIN)
JUDGE

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