



RSA-1377-2020 (O&M)

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

RSA-1377-2020 (O&M)

Pronounced on: 22.05.2024

INDERWATI

...Appellant

Versus

UMESH

...Respondent

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Rahul Pathania, Advocate
for the appellant.

RITU TAGORE, J.

1. Appellant (plaintiff before learned trial Court), lost her suit before the learned Courts below, has filed this Regular Second Appeal, against judgment/decreed dated 10.04.2019 passed by learned District Judge, Palwal, affirming the findings of learned trial Court given in judgment/decreed dated 07.07.2017.

2. For the sake of convenience, parties shall be referred to as per their original status before the learned trial Court.

3. Relevant facts for adjudication of this appeal are as under:-

Inderwati, the plaintiff instituted a suit for declaration and permanent injunction with averments that sale deed dated 30.07.2013 bearing Vasika No.2328 executed by her in favour of defendant, regarding suit land and subsequent mutation No.3621 sanctioned on the basis of sale deed are liable to be set aside/cancelled due to non-payment of sale consideration to her by the defendant. The sale deed is outcome of fraud played by defendant and

his companions Deepak son of Jeet Singh and Charan Singh son of



Ishwar; with further relief of permanent injunction, restraining the defendant from dispossessing the plaintiff from the suit land or alienating in favour of any one.

4. According to the plaintiff, her husband, Partap Singh, entered into an agreement to sell of 4 acre of land owned by him, with Bijender Singh Dagar son of Padam Singh and Varun son of Raghbir Singh resident of Palwal but could not execute the sale deed in their favour. As such, Bijender Singh Dagar etc. filed a civil suit for specific performance against her husband. Said Bijender Singh Dagar agreed to withdraw the suit on payment of Rs. Sixty lakhs (60,00,000/-) from her husband.

5. It is further the version of plaintiff that her husband purchased land from Mahavir son of Anang Pal and her husband required Rs. Forty lakhs (40,00,000/-) to pay the remaining sale price, for execution of sale deed.

6. Furthermore, it is averred by the plaintiff that defendant Deepak son of Jeet Singh and Charan Singh son of Ishwar came to their house and agreed to purchase the suit land, owned by her, detailed in the plaint @ Rs. One crore Twenty lakhs (1,20,00,000/-) per acre, for total sale consideration of Rs. One crore seven lakhs thirty five thousand five hundred thirty seven (1,07,35,537/-). The defendant disclosed to her and her husband that Bijender Singh Dagar is his relative and he would get the suit compromised and withdrawn, filed against her husband, by paying Rs. Sixty lakhs (60,00,000/-) to Bajinder Singh Dagar and further assured to help him to get sale deed executed in favour of her husband from Mahavir, for Rs. Forty lakhs (40,00,000/-). The defendant paid Rs. Nine lakhs fifty thousand



(9,50,000/-) in cash and gave Scorpio car of Rs.Four lakhs (4,00,000/-) to her husband.

7. The plaintiff further pleaded that she got the sale deed executed of the suit land in favour of the defendant, but he did not pay the remaining sale consideration. The sale deed was executed in good faith on zero payment. The defendant became dishonest and did not pay any amount to Bijender Singh Dagar and the suit was compromised on execution of sale deed of one acre land by her husband in favour of Bijender Singh Dagar. According to plaintiff, sale consideration was also recorded less in the sale deed against the actual and market price of the land about Rs. One crore twenty lakhs (1,20,00,000/-) per acre. Defendant, when refused to pay any heed to her requests to cancel sale deed, she filed the instant suit.

8. On being put to notice, the defendant appeared, filed written statement, denied the averments of the plaintiff as to allege fraud and further asserted that he gave entire sale consideration to the plaintiff as agreed upon and sale deed was accordingly executed. He stated he is owner in possession of the suit land. He denied that he ever visited the house of plaintiff and assured to pay Rs. Sixty lakhs (60,00,000/-) and Rs.Forty lakhs (40,00,000/-) to Bijender Singh Dagar etc. and Mahavir. He denied that plaintiff sold the land for Rs.One crore twenty lakhs (1,20,00,000/-) per acre. He averred that he paid entire valuable sale consideration of suit land to plaintiff. He denied the allegations of fraud and non-payment of sale consideration to the plaintiff.

9. No rejoinder was filed by the plaintiff. Since parties were at variance, learned trial Court framed following issues:-



- “1. Whether the plaintiff is entitled for the relief of declaration-cum-permanent injunction qua the ownership and possession of the suit property as mentioned in the plaint?OPP*
- 2. Whether the impugned sale deed No.2328 dated 30.07.2013 and its subsequent mutation No.3621 are illegal, null and void and not binding upon the rights of the plaintiff?OPP*
- 3. Whether the present suit is not maintainable?OPD.*
- 4. Relief.”*

10. The learned trial Court called upon the parties to lead evidence. Plaintiff led evidence as detailed in the judgment of learned trial Court. Defendant did not lead any evidence. On assessment of evidence, learned trial Court found that plaintiff failed to substantiate her case and dismissed the same.

11. Learned Appellate Court on reappraisal of evidence found no ground to differ from the conclusions drawn by learned trial Court and also dismissed the appeal.

12. Being aggrieved by the findings returned against the appellant-plaintiff by Courts below, preferred the instant appeal.

13. Learned counsel states that learned Courts below failed to appreciate the evidence in proper manner and failed to note that evidence of appellant-plaintiff remained unrebutted as defendant did not present any evidence to controvert the evidence of the plaintiff.

14. Learned counsel states that plaintiff's version (PW-6) received support from the statement of Registry Clerk, Om Pal (PW-2), Hariom Garg (PW-3) and Inder Singh, Lambardar (PW-5) stating no sale consideration



was paid to plaintiff at the time of execution of the sale deed. Learned counsel states in contrast, defendant did not come in the witness box to rebut the evidence of plaintiff and substantiate his assertion, having paid total sale consideration to the plaintiff. Learned counsel thus urged that appeal deserves to be allowed and suit be decreed.

15. I have heard learned counsel for the Appellant and gone through the record with his valuable assistance and find no reason to differ with the inferences and conclusions drawn by the Learned Courts below for the reasons detailed below:-

i. It is settled position of law that a plaintiff must stand on his own merits to earn the relief prayed for. He cannot take advantage of weakness or no case of the defendant. It is trite to say that plaintiff must present cogent and admissible evidence to obtain the relief sought for.

ii. In the present case, the plaintiff does not deny the execution of sale deed dated 30.07.2013 (Ex PW-1/C). She alleges that defendant committed fraud with her by not paying the entire sale consideration except paying Rs.Nine lakhs fifty thousand (9,50,000/-) and a Scorpio car worth Rs. Four lakhs (4,00,000/-). According to her, defendant promised to pay Rs. Sixty lakhs (60,00,000/-) to Bijender Singh Dagar, with whom her husband had civil litigation for non-performance of agreement to sell executed by her husband. Later, her husband compromised the matter with Bijender Singh Dagar on execution of sale deed of one acre and he withdrew the suit vide statement Mark A (a joint statement of Bijender Singh Dagar and Partap, the husband of plaintiff regarding withdrawal of suit) and Mark B, (the compromise between Bijender Singh Dagar and Partap, the husband of



plaintiff). However, plaintiff did not examine Bijender Singh Dagar to prove Mark A and Mark B.

iii. Now coming on the sale deed (Ex. PW-1/C). Its execution is not in dispute. As a matter of law there is a presumption about the regularity of the proceedings before the Sub Registrar, Hodal at the time of execution of the sale deed (Ex.PW-1/C). Where there is a registered document, the presumption is to be drawn in favour of its correctness unless same is rebutted. In present case, the plaintiff presented no evidence or circumstance to rebut the presumption attached with the registration of the document i.e sale deed (Ex.PW-1/C). The endorsement on the sale deed provides that document was read over by competent authority to the executant/plaintiff and made understand to her in presence of witnesses and after due satisfaction of its correctness and acceptance by the executant/plaintiff, the Sub Registrar, Hodal concerned, registered the document. There is no allegation of any bias or collusion made by the plaintiff against the Sub Registrar, Hodal.

iv. In the sale deed (Ex.PW-1/C), it is specifically mentioned that plaintiff has already taken the entire sale consideration, from the buyer. In the light of this recital, the onus was upon the plaintiff to disprove the same. This is not a case where plaintiff alone was involved in the entire transaction of selling the suit land. She admits her husband was involved throughout the transaction. Further it has come on record that the plaintiff's husband had previously engaged in the sale and purchase of the land. So, it cannot be argued that husband of plaintiff was inexperienced in such matters. If plaintiff had not received the remaining sale consideration, she should have



stated this before the Sub Registrar, Hodal when the recital of full payment of sale consideration, mentioned in the sale deed was read aloud to her in presence of her husband. Instead, she (in presence of her husband) confirmed this recital before the Sub Registrar, Hodal. The plaintiff or her husband should not have confirmed the receipt of the full sale consideration, if it was not true. They should have informed the Sub Registrar, Hodal that the plaintiff had yet to receive the remaining amount of sale consideration. By confirming that the entire sale consideration was received, the plaintiff, indeed, undermined her own case and directly or indirectly, supported the pleaded version of the defendant.

v. The plaintiff did not state that in presence of attesting witnesses or the scribe of sale-deed, the defendant was supposed to pay the remaining amount of sale consideration. Instead, the contents of sale deed indicate that defendant had already paid the entire sale amount. Therefore, the statements of Registry Clerk, Om Pal (PW-2), Hariom Garg (PW-3) and Inder Singh, Lambardar (PW-5), stating no sale consideration was paid in their presence in fact, provide no support to the plaintiff's claim. The plaintiff cannot derive any benefit from their statements. Consequently, non-appearance of defendant is also of no benefit to the plaintiff. In the light of above discussion, the plaintiff, has miserably failed to substantiate her case of non-payment of remaining amount of sale consideration by the defendant. The plaintiff also led no evidence in shape of Collector rate or other sale deeds to establish that the rate of land was higher than what was quoted in the sale deed.



16. All these factors taken together, makes no ground to form a different opinion to bring the findings of the learned Courts below within the realm of perversity.
17. For the reasons recorded above, I do not find any illegality or perversity, in the concurrent findings of learned lower Courts, which are based on oral as well as documentary evidence. I affirm the findings of the Courts below and find no ground for interference much less involvement of any substantial question of law.
18. Resultantly, there is no merit in the appeal and is, hereby, dismissed.
19. Pending miscellaneous application(s), if any, are also disposed of accordingly.
20. Appeal is accordingly **dismissed**.
21. Pending applications, if any, also stands disposed of accordingly.

22.05.2024
Rimpal

(RITU TAGORE)
JUDGE

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