



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

RSA-3049-2023 (O&M)
Date of Decision:-**23.07.2024**

VIRENDER KUMAR

... Appellant

Versus

CHAND KAUR AND OTHERS

... Respondents

-.-

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present:- Dr. Payel Mehta, Advocate
for the appellant.

RITU TAGORE, J. (Oral)

1. Being aggrieved by the concurrent findings returned against him, appellant-plaintiff has preferred this regular second appeal against the impugned judgment and decree dated 20.04.2023, passed in CA No.RBT-79 of 2020 by learned Additional District Judge, Panipat, affirming and upholding the judgment and decree dated 09.03.2016, passed in CS No.226 of 2013, by learned Civil Judge (Junior Division), Panipat.

2. For easy reference, parties shall be referred to as per their status before the learned trial Court.

3. The plaintiff, Bharta (since deceased now representing through his LRs), instituted a suit seeking to declare the sale deed bearing No.876/1 dated 26.03.1992 and Mutation No.4090, entered and sanctioned based on



the sale deed as illegal null and void, not binding upon his rights, being result of fraud and are liable to be set aside in respect of the suit land detailed in the plaint, situated within the revenue estate of Village Ahar, Tehsil Israna Distt. Panipat; further for a decree of permanent injunction, to restrain the defendants from alienating, mortgaging or transferring or dealing with the suit land in any manner.

4. According to the plaintiff, he is a co-sharer in possession of the suit land to the extent of 1/5th share. He was in need of money for domestic purposes and requested Om Parkash s/o Ram Kishan (since deceased now represented by LRs defendants) to lend him money, who agreed to lend the money against mortgage of the suit land in his favour. The plaintiff consented and agreed for the same. It is alleged by plaintiff that Om Prakash fraudulently got the sale deed executed of the suit land instead of mortgage deed. He never sold the suit land and obtained ₹8,000/- as mortgage money. The sale deed in favour of Ram Kishan s/o Singhu Ram (father of Om Parkash), is not binding upon his rights qua the suit land. Plaintiff further pleaded that 12.06.2013, the defendants (LRs of Ram Kishan) tried to dispossess him from the suit land, on the strength of illegal sale deed bearing No.876/1 and mutation No. 4090 dated 05.10.2012. When came to know about the execution of alleged sale deed in place of mortgage deed, he requested the defendants to admit his genuine claim over the suit land but they refused. Even Halqa Patwari refused to cancel the mutation entered and sanctioned on the basis of forged sale deed. Hence, the present suit.



5. Upon being put to notice by the learned trial Court, defendants No. 1,2,3,5,7 and 8 appeared and filed written statement, resisted the suit of the plaintiff taking several pleas including limitation, lack of cause of action, maintainability and estoppel etc. Defendants denied the possession of the plaintiff on the suit land, on the contrary, asserted their possession based on the sale deed dated 26.03.1992, claiming that Ram Kishan s/o Singhu Ram purchased suit land measuring 3 Kanal 1 Marla, including share in Shamlat Deh and Gora Deh, for a consideration of ₹8,000/-. Ram Kishan, is owner in possession of the suit land and plaintiff has no right, title or interest in the suit land purchased by Ram Kishan. It is stated that sale deed dated 26.03.1992 was scribed at the instance of plaintiff by the deed writer, the contents of the sale deed were read over to plaintiff and after admitting its contents, the sale deed was thumb marked by the plaintiff and attested by the witnesses and was registered before the Sub Registrar after due verification. It is pleaded that mutation has rightly been entered and sanctioned on the basis of sale deed dated 26.03.1992 as such the sale deed dated 26.03.1992 and mutation No.4090 are binding upon the plaintiff. No mortgage deed was ever executed by the plaintiff. With these averments, prayed for the dismissal of suit.

6. Since the parties were at variance the following issues were framed by the Court on 15.05.2015:-

1. Whether the plaintiff is entitled to the decree for declaration, as prayed for? OPP
2. Whether the plaintiff is entitled to the relief 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 cause of action to file the present suit? OPD
5. Whether the suit of the plaintiff is time barred? OPD
6. Relief.
7. In support of their version and counter version, parties led evidence as detailed in the judgment of learned Courts below.
8. On appraisal of the evidence, learned Trial Court dismissed the suit of the plaintiff concluding that plaintiff failed to prove his case by leading any cogent and material evidence. The learned first appellate Court reviewed and re-appreciated evidence and found no merit in the suit of the plaintiff and dismissed the appeal.
9. Being aggrieved by the judgment and decree of learned First Appellate Court the appellant has preferred the instant appeal.
10. I have heard the learned counsel for the appellant and have gone through the record with his valuable assistance.
11. Learned counsel for the appellant submits that whole approach taken by the Learned Courts below concerning the material questions of law, facts and evidence was fundamentally flawed and perverse. Learned Courts below have failed to consider material admissible evidence, and legal inferences that should have been drawn from the facts proved and admitted, have not been appropriately drawn. That the Learned Courts below erred by not giving due consideration to the appellant's claim, which was



substantiated by documentary evidence. The learned Courts below adopted an inconsistent method in evaluating the evidence, disregarding undisputed documents that supported the version of the appellant, while unduly favoring the oral submissions of the defendants. It is further submitted that learned Courts below misinterpreted the evidence provided by plaintiff's witnesses, erroneously concluding that they admitted the execution of the sale deed in favour of the Ram Kishan (deceased). It is stated that plaintiff has sufficiently proved his case, and a prayer is made for reappraisal of the evidence and to accept the appeal by setting aside the judgments. Consequently, the suit of the plaintiff should be decreed.

12. I have gone through the findings of the learned Courts below in the light of the evidence and arguments addressed, and find no illegality or perversity in the same, for the reasons recorded herein below.

13. Plaintiff is assailing the sale deed (Ex-PW 6/A/ D-2) and mutation No.4090 (Ex P-2/D-4) entered and sanctioned on the basis of aforesaid sale deed, by raising the pleas that sale deed (Ex-PW 6/A/ D-2) is nullity, an outcome of fraud. He never executed the sale deed in favour of Ram Kishan son of Singhu Ram, father of Om Prakash, now represented by the defendants (LRs of Ram Kishan and Om Prakash). It is pleaded that Om Prakash committed fraud upon him by falsely representing that he would lend him ₹8,000/- against the mortgage of his 1/5 share, in the suit land, as he was in urgent need of money.

14. However, the oral evidence led by plaintiff failed to support his aforesaid material assertions. Learned Courts below recorded categorical



findings that all the witnesses (Balbir PW-2, Sadhu Ram PW-3, Dei Chand PW-4) of the plaintiff have deposed that plaintiff Bhartu (since deceased) had executed a sale deed (Ex-PW 6/A/ D-2) in favour of Ram Kishan s/o Singhu Ram father of Om Prakash. The review of the oral deposition of the witnesses of the plaintiff as well as the his statement (Virender PW-1), this Court finds no perversity in the findings of the learned Courts below either on account of misreading or misappreciation of their testimonial account.

15. Further Ashok Kumar Deed Writer (DW-2) duly proved the execution of sale deed. His oral account has remained unrebutted. Bijender Singh Registration Clerk (DW-3) duly proved the registration of Sale Deed, which conclusively establishes the due execution of sale deed by empowered authority, rather than a mortgage deed. This nullifies the plaintiff's stand that he had executed the mortgage deed instead of a sale deed. The plaintiff failed to present cogent evidence to probabalise his claim that a mortgage deed had been executed. Further, the plaintiff's claim that sale deed does not bear his signature is of little significance as the sale deed bears his thumb impression, a more scientific and definite piece of evidence to prove the execution of a document. It is no case of the plaintiff that Om Prakash forcibly obtained his thumb impression and converted into a sale deed. The plaintiff admits that he had gone to Tehsil office for the execution of the mortgage deed. This admission indicates that the plaintiff was present in Tehsil office for the purpose of execution of a document, albeit a mortgage deed. However, the facts and circumstances on record supports the version of defendants that Plaintiff Bharta indeed executed the sale deed and not



mortgage deed. No other evidence either documentary or oral, has been presented on record to suggest that a mortgage deed was intended to be executed instead of a sale deed. Furthermore, the plaintiff has not raised any plea to show that sale consideration was less than the market value, which could suggest that the consideration was for a mortgage amount rather than the sale deed.

16. Moreover, it is well established legal principle that to establish the plea of fraud, the proponent must prove it beyond a reasonable doubt, akin a criminal charge, by bringing cogent, reliable and material evidence in said regard. In this regard reliance can be placed on **Union of India vs M/S Chatur Bhai CLJ 1976(Civil)SC 166**; wherein it was held that plea of fraud is like any other charge whether made in civil and criminal proceedings must be established beyond reasonable doubt.’

17. In the present case, plaintiff has failed to present any clear and reliable evidence to substantiate the claim that fraud was committed with him concerning the execution of sale deed. Despite being aware of the alleged fraud since 2013, the plaintiff did not file a complaint with the police. The endorsement dated 05.10.2012 made while carrying out the mutation proceedings on the mutation entry (Ex D-6) indicates that Plaintiff-Bharta was present and confirmed the validity of sale deed in favour of Ram Kishan before Revenue authorities, resulting in sanctioning of the mutation. These material facts undermine and contradict the plaintiff’s allegations of fraud perpetrated upon him.



18. The plaintiff's claim of continuous possession of suit property is nullified by the Nehri Girdwaris (EX.DW4/A to DW 4/F) indicating that the defendants have been cultivating and irrigating it with canal water. Jamabandi 2014-15 (EX-D-7) further establishes that legal heirs of Ram Kishan (Defendants) are in possession of suit land.

19. The plaintiff filed the suit on 02.09.2013, 21 years after the execution of sale deed on 26.03.1992, alleging fraud in execution of sale deed. However, the plaintiff's claim that he became aware of the sale deed in 2013 is contradicted by an endorsement on (Ex.D-6), which records his presence and affirmation of the sale deed executed in favour of Ram Kishan. This evidence casts serious doubt on the plaintiff's assertion of gaining the knowledge in the year 2013, suggesting it a contrived plea to bring the suit within the limitation period.

20. Moreover, a suit seeking a declaration *simplicitor* without possession is not maintainable. The evidence, as discussed, demonstrates that the plaintiff has failed to establish his cultivating possession on the suit land. Consequently, the suit in its present form is not maintainable.

21. In view of the above discussion, this Court finds that inferences so drawn by Courts below and conclusions reached by the courts are based on a sound appreciation of evidence. The learned Counsel for appellant failed to identify any misreading or overlooking of any material piece of evidence and misapplication of evidence by the Courts below that would render the the findings as recorded by the learned Courts below as absurd.

22. No other point urged.



23. For the reasons aforementioned, I do not find any illegality or perversity, in the concurrent findings, which are based on sound application of oral and documentary evidence. No ground for interference is made out much less involvement of any substantial question of law.
24. As a result, there is no merit in the appeal and is, hereby, dismissed.
25. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

23.07.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No