

RSA-5088-2018 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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RSA-5088-2018 (O&M)
Reserved on:23.07.2024
Pronounced on:25.07.2024

Santosh & another

... Appellants

Vs.

Parveen & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Ravinder Malik Ravi, Advocate for the appellants.

...

SUKHVINDER KAUR, J.

1. Instant regular second appeal has been filed by the appellants/plaintiffs against the concurrent findings recorded by both the Courts below vide which suit of the plaintiffs for declaration has been dismissed.

2. Brief facts of the case as per plaint are the plaintiffs are owners in possession of agricultural land as detailed in the plaint situated at village Sanheri Khalsa as per jamabandi for the year 1997-98. Defendant No.3 is the real brother of the plaintiffs. In the month of May, 2002, defendant No.3 came to the plaintiffs at village Ahar Kurana, District Panipat and asked the plaintiffs to mortgage their share for raising tractor loan from Punjab & Sind Bank, Pipli. It is alleged that on 14.05.2002, defendants No.1 and 3 brought the plaintiffs at Kurukshetra at the house of defendants No.1 & 2. Plaintiffs were left at the house of defendants No.1 and 2 by defendants No.1 and 3.



Plaintiffs kept waiting for them upto 3:00 P.M. Defendants No.1 & 3 took the plaintiffs to the office of Sub Registrar, Kurukshetra and got registered sale deed No.783 dated 14.05.2002 fraudulently, without disclosing anything to the plaintiffs. Plaintiffs were told that their share had been mortgaged to defendants No.1 and 2 for loan from Punjab and Sind Bank, Pipli. It is averred that plaintiffs are still in possession of the suit land. Thereafter, defendants No.1 & 2 got sanctioned mutation No.517 in their favour regarding the suit land on the basis of the aforesaid sale deed got executed illegally and fraudulently. On 28.04.2003 when the plaintiffs obtained *farad* jamabandi of their land, then they came to know about the entire matter. Plaintiffs requested defendants to admit the claim of the plaintiffs and treat the sale deed No.783 dated 14.05.2002 as null, void, illegal and nonest and not binding upon the rights of the plaintiffs but the defendants remained adamant and refused to accede to their request. Hence, the present suit was filed by the plaintiffs.

3. Defendants No.1 and 2 filed written statement raising preliminary objections regarding maintainability, *locus standi*, cause of action, estoppel, suit being time barred and concealment of true and material facts. On merits, it was alleged that suit land was purchased by the defendants from the plaintiffs with their own free will and consent and for a valuable consideration. Plaintiffs sold the land measuring 16 kanals 5 marlas to defendants for valuable consideration of Rs.3,65,625/- along with 1/3rd share in the tubewell and all other rights of ingress and egress. It was alleged that the entire sale consideration of Rs.3,65,625/- was paid to the plaintiffs



before the Sub Registrar and plaintiffs gave possession to the defendants on the spot and since then the defendants are owners in possession over the suit land and plaintiffs have no right, title or interest in the suit land. The other contentions were denied and prayer for dismissal of the suit was made.

4. From the pleadings on the parties, the following issues were framed:

“1. Whether the plaintiffs are entitled for a decree of declaration to the effect that the sale deed No.783 dated 14.05.2002 and mutation No.517 is wrong, against law and facts as alleged in the plaint? OPP

2. Whether the plaintiffs are entitled for the injunction as prayed for? OPP

3. Whether the plaintiffs have no locus standi to file the suit? OPD

4. Whether the plaintiffs are estopped by their own acts and conduct from filing the suit? OPD

5. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD

6. Whether suit is not maintainable in the present form? OPD

7. Whether the suit is bad for mis-joinder and non-joinder for necessary parties? OPD

8. Relief.”

5. Thereafter, both the parties led their respective evidence. In order to prove their case, plaintiff No.1 examined herself as PW1 and Salochana (plaintiff No.2) appeared as PW2, who deposed as per their pleadings. Ishwar Singh PW3 tendered into evidence his affidavit



Ex.PW3/A regarding cultivation over the suit land by the plaintiffs. The plaintiffs also produced on record documents Ex.P1 to Ex.P7 and Mark-A in their evidence.

6. On the other hand, one of the defendants Naveen Kumar appeared as DW1 and deposed as per the pleadings. DW2 Tej Parkash, Bank Officer, Punjab & Sind Bank, Pipli, has deposed about mortgaging of 36 kanals 11 marlas land in favour of bank by plaintiffs - Santosh, Salochana and defendant No.1 Ram Pal. He has further deposed that Ram Pal had deposited Rs.71,427/- on 14.05.2002 and produced clearance certificate Ex.D8 and voucher Ex.D7. DW3 Bhushan Lal S/o Mam Raj, who is the attesting witness of the sale deed tendered his affidavit Ex.DW3/A regarding execution of the sale deed. DW4 Warryam Singh, Reader to SDM, Pehowa has deposed about the registration of the sale deed No.783 dated 14.05.2002. They also produced on record documents Ex.D1 to Ex.D8.

7. Vide judgment and decree dated 21.12.2015 of the trial Court, suit of the plaintiffs was dismissed. An appeal was preferred before the First Appellate Court which was also dismissed vide judgment and decree dated 03.01.2018. Hence, feeling aggrieved of the same, plaintiffs/appellants have knocked the doors of this Court by way of filing the present regular second appeal.

8. Learned counsel for the plaintiffs/appellants has contended that both the Courts below have grossly erred in law and have failed to appreciate the evidence produced on record by the plaintiffs/ appellants. Ample evidence has been produced on record to prove that the

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plaintiffs/appellants have been defrauded by their brothers/respondents/defendants. He has further contended that intention of the plaintiffs/appellants was only to mortgage their land and not to sell the same. No sale consideration was received by the plaintiffs/appellants and there is no endorsement of the Sub Registrar on the sale deed to the effect that the sale consideration was paid before him. He has further argued that the plaintiffs/appellants are still in possession over the suit land. The plaintiffs/appellants are illiterate, rustic village ladies and no sale deed was executed by them. The contents of the sale deed Ex.P5 were not read over to them and their thumb impressions were obtained for mortgaging the suit property. The burden of proof is on the respondents/defendants to prove that the transaction was fair and the sale deed was executed by the plaintiffs/appellants out of their free will and after understanding the effect and import of transaction, but this vital aspect of the matter has been overlooked by both the Courts below. He has further argued that the scribe of the impugned sale deed Ex.P5 has not been examined, who could have deposed about the contents of the impugned sale deed. To support his contentions, learned counsel for the appellants has relied upon a decision of Hon'ble the Apex Court in **Kewal Krishan Vs. Rajesh Kumar & others** rendered in **Civil Appeal Nos.6989-6992 of 2021** arising out of **SLP (C) Nos.2033-36 of 2016** decided on 22.11.2021. He has submitted that the entire transaction was fraudulent and was based on misrepresentation by defendant No.3 who being in fiduciary relationship was in the position to dominate the plaintiffs. He has submitted that as both the Courts below have



failed to appreciate the evidence on record in the right perspective, so both the judgments are liable to be set aside.

9. I have heard learned counsel for the appellants and have gone through the record.

10. The plaintiffs/appellants have challenged sale deed No.783 dated 14.05.2002 purportedly executed by plaintiffs in favour of defendants No.1 & 2 and mutation No.517 which was sanctioned pursuant thereto in respect of the suit land. The entire case of the plaintiffs is based on the plea that the plaintiffs/appellants, being illiterate rustic village ladies were taken to the Tehsil office, by their brother defendant No.3, Ram Pal on the pretext that their share was to be mortgaged for payment of tractor loan taken from Punjab and Sind Bank, Pipli. But this plea of the plaintiffs/appellants stands falsified from Ex.D4 copy of jamabandi for the year 1997-98, as in its column No.12 it has been reflected that 36 kanals 16 marlas land being 1/4th share of 147 kanals 6 marlas was already mortgaged by plaintiffs - Santosh, Salochana and defendant No.3 – Ram Pal with Punjab and Sind Bank, Pipli for a sum of Rs.70,000/-. This fact also stands proved from testimony of DW2 Tej Parkash, an officer of Punjab & Sind Bank, Pipli, who has deposed that plaintiffs – Santosh, Salochana and defendant No.3 – Ram Pal had mortgaged 36 kanals and 11 marlas land in favour of bank and on 14.05.2002, Ram Pal deposited Rs.71,427/- consequent to which there was nothing outstanding and clearance certificate Ex.D7 was issued . Even plaintiff – Santosh while appearing in the witness box as PW1 had admitted that she had mortgaged land in favour of the bank for obtaining tractor loan.



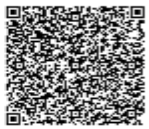
So once it is proved that land of the plaintiffs and defendant No.3 was already mortgaged with the bank, then this version of the plaintiffs/appellants that defendant No.3 had taken them to the Tehsil office on the pretext that their share was to be mortgaged for payment of tractor loan is not acceptable. Moreover, it also stands proved that on 14.05.2002 the entire loan was paid and the date of execution of the impugned sale deed and payment of loan to Punjab and Sind Bank is same i.e. 14.05.2002. The plaintiffs withheld from the Court that their land was mortgaged with Punjab and Sind Bank before 14.05.2002 and on 14.05.2002 they had repaid the loan amount to the bank, which is sufficient to falsify this plea of the appellants/plaintiffs that they had not received any money/consideration from defendants No.1 & 2 at the time of execution of Ex.P5. It has been further rightly observed by the Courts below that even an illiterate rustic lady taken to Tehsil office on the pretext of execution of mortgage deed is in a position to understand that the transaction would be for exchange of consideration. So plaintiff's stand that they executed mortgage deed but no money was paid to them, belies logic and stands rebutted by Ex.D8 which shows that entire outstanding loan of Rs.71,427/- was deposited by plaintiffs and defendant No.3 on the date of execution of the sale deed.

11. Admittedly, Ex.P5 is a registered document and presumption of correctness is attached to endorsement of Sub Registrar, which again negates the plea of the plaintiffs that the sale deed in question was result of fraud and misrepresentation or recital in the sale deed regarding payment of sale consideration to the plaintiffs is not correct. It is trite law that a registered



document prima facie would be valid in law and onus of proof will be on the person who challenges its correctness by leading evidence to rebut the presumption. So the factum of withholding regarding mortgaging the suit land by the plaintiffs/appellants much prior to execution of Ex.P5 sale deed with the bank and payment of Rs.71,427/- to the bank by the plaintiffs along with defendant No.3 on the date of execution of the sale deed goes a long way to prove the falsity of the stand of the plaintiffs/appellants regarding the alleged fraud and misrepresentation.

12. It is also pertinent to note that defendants have also examined attesting witness of the sale deed, namely, Bhushan Lal. In his deposition Ex.DW3/A, he has fairly deposed that the plaintiffs – Santosh and Salochana being owners of 16 kanals and 5 marlas of land executed sale deed in favour of defendants No.1 and 2 for total sale consideration of Rs.3,65,625/- and the sale deed was executed on the instructions of the plaintiffs, which was read over to them by writer and was thumb marked by them after admitting the same as correct. He has also stated that thereafter he and Numberdar Nasib Singh thumb marked the said document besides Ram Pal/defendant No.3. Defendants have also examined Warryam Singh, Reader to SDM, Pehowa, who has deposed that on 14.05.2002, when he was posted as Registration Clerk in the office of Sub Registrar, Thanesar, sale deed No.783 dated 14.05.2002 was registered. He identified signatures of the then Registrar on the sale deed and stated that the parties had accepted the passing of the sale consideration before the Sub Registrar. The plaintiffs have not levelled any allegations against the attesting witness or Sub



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Registrar who has registered the sale deed Ex.P5. Endorsement of Sub Registrar on the sale deed Ex.P5 also shows that the document was read over to both the parties by the officer and was accepted as correct by them. Thereafter, they affixed their thumb impressions and also affirmed the passing of the sale consideration. The trial Court has rightly held that there is no reason to doubt the endorsement of a public servant on the sale deed when there is no convincing evidence to hold that plaintiffs were fraudulently made to thumb mark the document Ex.P5 on the pretext that it was a mortgage deed and sale deed Ex.P5 is a valid and genuine document. The case law cited by learned counsel for the appellants is of no help to him being based on distinguishable facts.

13. No question of law much less substantial question of law arises for determination in the present second appeal. The appeal is without any merits and is hereby dismissed.

14. Pending application(s), if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

25.07.2024
harjeet

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |