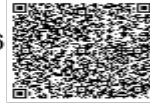
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****114****RSA-201-2020 (O&M)****Date of decision: 27.11.2025****Ram Sarup and another****...Appellant(s)****Vs.****Raj Kumar and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. S.M.Sharma, Advocate for the appellants.***********NIDHI GUPTA, J.**

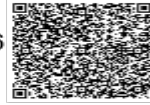
Plaintiffs No. 2 and 3 are in Second Appeal against the concurrent judgments and decrees of the learned Courts below; whereby suit for declaration filed by the appellants has been dismissed by both the Courts below.

2. Brief facts of the case are that the plaintiffs had filed the present suit for declaration to the effect that they are in joint possession of suit land as detailed in head note of the plaint as per jamabandi for the year 1998-99 and the sale deeds mentioned at Sr. no. (i) to (viii) as detailed in head note of the plaint and mutations sanctioned thereon on the basis of abovesaid sale deeds and subsequent entries in the revenue record and mutation no. 407 in the jamabandi for the year 1983-84 allegedly partitioning the suit land and mutation no. 408 in the jamabandi for the year 1983-84 and mutation no. 413 in the jamabandi for the year 1983-84 are null and void and not binding upon the rights of plaintiffs. A



consequential relief of permanent injunction was also sought restraining the defendants from alienating the suit land in any manner.

3. It was pleaded in the plaint that previously the suit land was owned and possessed by the plaintiffs alongwith their brother Mam Raj, who had died intestate; and half share of the suit land was owned and possessed by their uncle Mulla, who had also died intestate. After the death of Mulla, Mam Raj, plaintiffs and one Parvati Devi had succeeded to the suit land. 1/8th share of plaintiff No.3 was attached by order of Sub-Judge Jagadhri, in favour of Defendant No.1 but the suit land was never auctioned. It was alleged that respondent No.1 was a cunning person and had played fraud with the plaintiffs by showing himself as owner of the suit land. It was further alleged that defendant No.1 is a rich man and lends money on interest to the villagers including plaintiffs. As such, defendant No.1 used to obtain thumb impression on blank papers. Plaintiffs had earlier taken a loan from defendant No.1 several times but had repaid the same with interest. However, papers of the loan were not returned by defendant No.1. It was averred that plaintiffs had never executed Sale Deeds which were result of fraud and misrepresentation played by defendant No.1 upon them who are illiterate persons belonging to rural background. It was further averred that plaintiffs had never intended to sell or mortgage the suit land and had always remained in possession of the suit land as owners. Prior to filing of the suit, defendants No.3 to 8 including defendants No.1 and 2 had tried to dispossess the plaintiffs from the suit land. It was alleged that defendants are threatening

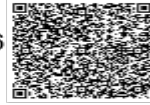


to alienate the suit land on the basis of wrong revenue entries. With these pleadings, suit was filed on 21.05.2005.

4. Upon appraisal of the pleadings and the evidence led by the parties, the learned Additional Civil Judge (Senior Division), Bilaspur had dismissed the suit of the plaintiffs vide judgment and decree dated 14.01.2013. The Civil Appeal filed by the plaintiffs was also dismissed by the District Judge, Yamuna Nagar at Jagadhri vide judgment and decree dated 01.03.2018. Hence, present Second Appeal by the plaintiffs No. 2 and 3.

5. It is *inter alia* submitted by learned counsel for the appellants that learned Courts below were in patent error in non-suiting the plaintiffs as they failed to appreciate that the plaintiffs were unable to lead any evidence due to unavoidable reasons as all the family members of the plaintiffs were falsely involved in criminal case; and some of them ran away from the village and few were behind the bars. It is submitted that as the appellants were unable to lead any evidence before the learned Trial Court, accordingly, before the learned First Appellate Court, appellants had moved an application under Order 41 Rule 21 CPC for permission to adduce additional evidence which has also been dismissed.

6. It is further submitted by learned counsel for the appellants that the respondents cannot take benefit of section 41 of the Transfer of Property Act, as no amount has been paid to the appellants and they never ever executed the sale deeds. As such both the courts below have illegally and wrongly extended the benefit of Section 41 to the



respondents. It is fact that Brij Bhushan and Vidyasagar are not resident of village Malikpur Nagar and Rahti Devi and Raj Kumar had already died.

7. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

8. No other argument is raised on behalf of the appellants. I have heard learned counsel for the appellants and perused the case file in detail.

9. I find no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below as admittedly plaintiffs had failed to lead any evidence in support of their contentions. Plaintiffs had taken a plea that their thumb impressions were result of fraud and misrepresentation; and had been taken by the defendants on blank papers, while extending loan to the appellant. However, the record reveals that plaintiffs had been affixing their thumb impressions for a long period of 14 years. It defies belief that plaintiffs continued to keep affixing their thumb impressions for a period of 14 years without demur; and thereafter alleged fraud. Furthermore, plaintiffs even failed to prove the fraud alleged against the defendants.

10. Even contention of the plaintiffs that loan amount was repaid by the plaintiffs with interest, but papers were not returned to them, does not inspire belief as admittedly, plaintiffs did not move any complaint against the defendants regarding non-returning of papers. Plaintiffs had even failed to prove their possession over the suit property. PW2 Randhir



Singh has admitted in his cross-examination that defendants are in cultivating possession over the land in dispute since long as owners. PW3 Ikram had also admitted that land measuring 3 K 16 M is in possession of defendant No.3. PW3 had further admitted that defendants No. 1 to 8 have purchased the land and are in possession over the same. PW4 Tara Chand had also admitted that Raj Kumar and his mother had purchased the land in their village and are in cultivating possession of the same. None of the plaintiffs have stepped into the witness box to prove their case against the defendants. Even there is no explanation given by the plaintiffs for their non-appearance. It is stated before this Court that plaintiffs were behind bars et cetera. However, nothing was shown to substantiate the said assertion of the plaintiffs.

11. Moreover, though all the defendants No. 3 to 8/subsequent purchasers have been impleaded as party in the present suit, however, Sale Deeds executed in their favour, had not been challenged. The said 8 Sale Deeds have been executed for a period of 14 years from 1970 to 1984. Thus, contention of the plaintiffs that on each occasion, defendants No. 1 and 2 took thumb impressions of the plaintiffs before the Sub Registrar fraudulently, is not believable; especially as plaintiffs have not stepped into witness box. Therefore, authenticity is attached to Sale Deeds. Defendants No.3 to 8 were proved to be bonafide purchasers for a valuable sale consideration. All witnesses of the plaintiffs except PW1 have admitted that defendants are in possession of the suit land.



However, as plaintiff No.1/PW1 did not come for cross-examination, his statement cannot be read in evidence.

12. Even application filed by the plaintiffs under Order 41 Rule 27 for additional evidence has been rightly dismissed by the First Appellate Court for valid reasons given in the judgment dated 01.03.2018, as follows:-

“iii) The plaintiffs have not stepped in the witness box. Therefore, the presumption of authenticity attached to the sale deeds executed in favour of defendant No.2 remains intact. (It is worth mention that the plaintiffs have filed an application under Order 41 Rule 27 of the Code of Civil Procedure seeking permission to appear as witnesses by way of additional evidence contending that when their evidence in the lower court was being led, they were in jail. Since no documents have been placed on record to show the period of their incarceration, if any, to my mind, no justification for granting permission to the plaintiffs to step in the witness box by way of additional evidence is made out. The application is, accordingly, dismissed.)”

13. Learned counsel for the appellants is unable to controvert or dispute the above said facts and findings. In view of the above, the present Regular Second Appeal stands **dismissed**.

14. Pending applications, if any, stand disposed of.

27.11.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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