



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

119

RSA-4601-2019

Date of decision : 10.07.2025

Damodari Devi (Deceased) through LR**..... Appellant**

versus

Somesh Soni and others**..... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Arihant Jain, Advocate
Mr. Kanish Jindal, Advocate and
Ms. Vasudha, Advocate
for the appellant.

PANKAJ JAIN, J. (Oral)

1. Plaintiff is in second appeal.
2. Plaintiff filed suit seeking decree of declaration to the effect that she is owner in joint possession of land as detailed out in the headnote of the plaint and that the sale deed dated 11.05.2007 executed by her in favour of defendant No.1 and 2 qua the said land is null, void and inoperative upon her rights being result of fraud and without consideration. In the alternate, she sought recovery of Rs.17,00,000/- alongwith interest.
3. As per plaintiff, she is owner in joint possession of land measuring 96 kanal 11 marlas and was declared so by judgment and decree dated 18.03.2005 passed in civil suit No.120 of 1998/99 decided by Civil Judge (Sr. Divn.), Hoshiarpur. Thunia Ram, Dogla and Daya Ram sons of Besu Ram @ Belu Ram were owners in possession of suit land. Daya Ram was looking after property in question. Thunia Ram



and Dogla were looking after land situated in Himachal Pradesh. After death of Thunia Ram husband of plaintiff, she succeeded him and became owner to the extent of 1/3rd share in the entire estate being the only legal heir of Thunia Ram. She had to file a civil suit to claim her right against brothers of her husband namely Dogla and Daya Ram. She appointed Kartar Chand defendant No.3 and Narain Singh defendant No.7 as her General Attorneys to contest the said suit. In the entire *lis*, she was defended by her attorneys Kartar Chand defendant No.3 and defendant No.7 Narain Singh. Civil suit was decreed in the month of March 2005. Two separate appeals were filed against plaintiff which are pending. In those appeals also, plaintiff is being defended by her attorneys. Defendant No.2 and 7 in connivance with other defendants took undue advantage and played fraud upon the plaintiff. She was brought from Himachal Pradesh to Hoshiarpur and was made to thumb mark documents dated 11.05.2007 without disclosing their nature on the pretext that the same are required for the purpose of defending civil appeals. Even address of the plaintiff was wrongly mentioned in the sale deed. The plaintiff never received single penny out of the total sale consideration of Rs.17,00,000/-. The plaintiff thus claimed the sale deed dated 11.05.2007 to be result of fraud.

4. Plaintiff further claimed that account was opened on 18.04.2007 with Kangra Cooperative Bank, village Ladraur, District Hamirpur with an amount of Rs.200/-. Demand draft as mentioned in the sale deed dated 11.05.2007 was deposited by defendant No.3 in the said branch. The amount was received in bank on 30.04.2007. Entire amount was withdrawn on the same day and the same was utilized as



investment in fixed deposit receipts in the names of defendant No.3 Kartar Chand, defendant No.4 Anju Devi, defendant No.5 Vikas and defendant No.7 Sweta.

5. Defendant No.3, 4, 5 and 6 filed written statement claiming that after suit was decreed in favour of plaintiff on 18.03.2005, she agreed to sell the property vide agreement to sell dated 13.04.2007 in favour of defendant No.1 and 2 for a sum of Rs.17,00,000/-. Plaintiff received Rs.9,00,000/- as earnest money. Rs.5,00,000/- was taken in cash before the attesting witnesses. Rs.4,00,000/- was received through bank drafts. The same was attested by defendant No.3 and Jawahar Lal with whom she used to stay whenever she came to Hoshiarpur. Rs.8,00,000/- was received in cash by the plaintiff from defendant No.1 and 2 vide writing dated 19.04.2007 by making endorsement on the back of the agreement to sell. Plaintiff shifted from the house of Dev Raj Sankhian son of her real sister Premi Devi and gave him Rs.4,00,000/-. Thereafter, she joined hands with sons of Daya Ram with whom she has been litigating. Defendant No.1 and 2 filed their separate written statement admitting that plaintiff was owner in possession of 99 kanal 2 marlas of land. It was claimed that plaintiff alongwith Jawahar Lal and Kartar Chand defendant No.3 approached defendant No.1 and 2 expressing her wish to sell the land. Defendant No.1 and 2 agreed to purchase the same for Rs.17,00,000/-. As desired by plaintiff, two bank drafts of Rs.2,00,000/- each were prepared and handed over to her and agreement to sell was executed. Rs.5,00,000/- was paid in cash. Thereafter, on 19.04.2007, Rs.8,00,000/- was taken in cash by the plaintiff from defendant No.1 thumb marking at the back of



the agreement to sell. Thereafter, she executed sale deed on 11.05.2007. The same was read over to her by regular scribe. The defendant thus prayed for dismissal of suit.

6. The suit filed by the plaintiff was put to trial framing following issues by the Court of First Instance:-

“1. Whether the plaintiff is owner in possession of the suit property? OPP

2. Whether the sale deed dated 11.05.2007 executed by plaintiff in favour of defendants No. 1 and 2 is illegal, null and void and being the result for fraud? OPP

3. Whether plaintiff is entitled to declaration as prayed for? OPP

4. **(Deleted vide order dated 19.8.2015 being repetition)**

5. Whether the plaintiff in alternative is entitled to recovery of 17,00,000/-? OPP

6. Whether the plaintiff is entitled for joint possession of the suit property? OPP

7. Whether plaintiff has no cause of action to file the suit? OPD

7A. Whether Damodari Devi executed a Sulahnama dated 15.8.2007 in favour of Kartar Chand? OPD defendants No. 3 to 6.

8. Relief.”

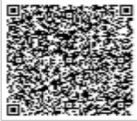
7. Trial Court after analysing the evidence threadbare came to the conclusion that plaintiff challenged the sale deed claiming fraud, but while appearing before the Court in the witness box admitted that the property was sold with her consent and that the suit was filed at the asking of her brother-in-law. The Courts below further referred to Ex.DW 10/B i.e. Sulahnama dated 15.08.2007, which proved payment of consideration. The same has been taken as admission on part of the plaintiff. Suit filed by the plaintiff stands dismissed. The findings have been affirmed by the Lower Appellate Court.



8. Counsel for the appellant has assailed the findings recorded by the Courts below. He submits that the plaintiff was in a fiduciary relationship with defendant No.3 and defendant No.7 who were acting as her power of attorney in defending litigation against the brothers of her husband. Sale deed was executed by her on the pretext of getting a document executed which was necessary to defend the appeals. No payment was made before the Sub-Registrar and thus, the Courts below erred in misreading the evidence. A sale deed which was executed by misrepresenting the contents of the same has been held to be valid by the Courts below by returning finding which is perverse and is unsustainable in the eyes of law.

9. I have heard counsel for the appellant and have carefully gone through the records of the case.

10. The entire case pleaded by the plaintiff-appellant hinges upon misrepresentation qua contents of the sale deed and the alleged fraud committed on the plaintiff by defendant No.3 and 7. There are allegations against defendant No.3 to 7 with respect to misappropriating the sale proceeds received by way of demand draft. However, neither of defendant No.3 to 7 are beneficiaries under the sale deed. The sale deed has been executed in favour of defendant No.1 and defendant No.2. There is no allegation against them of having committed any fraud upon the plaintiff. Rather the testimony of plaintiff herself is most fatal to her case. She appeared as PW-1 and admitted in her cross examination that the deal to sell the property was struck with her consent through Jawahar Lal. She also admitted it to be correct that she agreed to sell the land for Rs.17,00,000/-. She further admitted that the present suit



was filed by her on the asking of her brother-in-law with whom she was fighting a legal battle to claim the same property. She has not filed the present suit out of her own free will. The payment of part of sale consideration through demand drafts stands proved. The sale transaction is between plaintiff and defendant No.1 and 2. The same cannot be annulled on the ground that defendant No.3 and 7 misappropriated part of the sale proceeds after defendant No.1 and 2 paid the same to plaintiff exercising undue influence on her. Once plaintiff admits that the sale deed was executed by her out of her own will and that the suit has not been filed with her consent but on the asking of her brother-in-law, this Court does not find any reason to interfere in the regular second appeal.

11. The appeal filed by the plaintiff is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

10.07.2025

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No