

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

2025.PHHC:111092



Reserved on: 08.08.2025

Date of pronouncement: 22.08.2025

RSA-5068-2019 (O&M)

KAMALJEET KAUR

... APPELLANT

VERSUS

RAJINDER SINGH AND OTHERS

... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE PARMOD GOYAL

Present:- Mr. Satyam Arora, Advocate for
 Mr. Rajeev Kawatra, Advocate for the appellant.

* * * *

PARMOD GOYAL, J.

1. Unsuccessful plaintiff/appellant is aggrieved by concurrent findings recorded by Courts below vide judgment and decree dated 05.01.2016 passed by Court of Civil Judge (Junior Division), Abohar and judgment and decree dated 30.04.2019 passed by learned District Judge, Fazilka vide which suit preferred by appellant/plaintiff for declaration and permanent injunction was dismissed by both the Courts below.

2. Plaintiff/appellant had sought relief of declaration to the effect that sale deed dated 23.04.2010 bearing Vasika No.360 executed by plaintiff and defendants no. 2 to 5 is illegal, null and void, inoperative without consideration, result of fraud, not binding upon rights of plaintiff and defendants no. 2 to 5 as same was got fraudulently by defendants no. 1 by misrepresenting that he was getting mortgage deed executed from plaintiff

and defendants no. 2 to 5 but instead got sale deed executed regarding the suit property.

3. It is the case of plaintiff/appellant that plaintiff and defendants no. 2 to 5 are owners in joint possession of 17 Kanal 4 marlas i.e. 344/5849 share of 299 kanals 0 marlas comprising in khewat no.13 and 2 kanals, 12 marlas i.e. 52/624 share of 31 kanals 04 marlas comprising khewat no.311 situated in village Kikkar Khera Abohar District Fazilka. It was asserted that sale deed dated 30.04.2010 be declared illegal, null and void and defendant no.1 be permanently restrained from alienating land to any other person by way of mortgage, transfer by sale, gift or exchange on the basis of false revenue records. Plaintiff claimed that she is deaf and dumb since her birth whereas defendant no. 2 is an old lady, she is about 85 years, suffering from hearing, weak eye-sight whereas defendant no. 3 was not in fit mental state and is unable to think about his own benefits and depends upon other persons. That plaintiff and defendant no. 2 to 3 were in need of money for their medical treatment and accordingly, defendant no.1 offered loan subject to mortgage of land. The said proposal was agreed by plaintiff and defendants no. 2 to 5 and they agreed to execute mortgage for borrowed amount of Rs. 2 Lakhs at the interest of 12% per month. However, taking advantage of physical disabilities of plaintiff and defendants no. 2 to 3 by playing fraud and not disclosing contents of documents, defendant no.1 got sale deed dated 23.04.2010 bearing no. 360 fraudulently without consideration and without consent of plaintiff and defendants no. 2 to 5.

4. Defendants took number of preliminary objections regarding cause of action, maintainability, estoppel. On merits, it was asserted that

plaintiff and defendants no. 2 to 5 had informed represented to defendant no.1 that they are in need of money and defendant no.1 had agreed to purchase suit property for valuable consideration. Defendant no.1 had duly paid consideration amount and got sale deed executed in his favour. It is asserted that plaintiff and defendants no. 2 to 5 are real brother, mother & sisters of plaintiff and they all executed sale deed after admitting all facts and understanding, contents of sale deed. It is asserted that after execution of sale deed, plaintiff and defendants no. 2 to 5 have got no concern with the suit property. Defendant has specifically denied any fraud, rather asserted that sale deed was duly registered before the Sub-Registrar. The allegations that plaintiff and defendants no. 2 to 5 had borrowed Rs.2 Lakhs and agreed to mortgage their land were specifically stated to be wrong and denied. The allegations of fraud and absence of consideration were also specifically denied.

5. Following issues were framed by the learned Court of First Instance:-

1. Whether the plaintiff is entitled for relief of declaration as prayed for in the plaint?OPP
2. Whether the plaintiff is entitled for relief of Permanent injunction as prayed for ?OPP.
3. Whether the plaintiff has any cause of action and locus standi to file the instant suit?OPP.
4. Whether the suit of the plaintiff is not maintainable in the present form?OPD.
5. Whether the plaintiff is estopped by her act and conduct from filing the present suit? OPD.
6. Whether the plaintiff has not approached the court with clean hands?OPD.
7. Whether the suit of the plaintiff is not properly valued? OPD.
8. Relief.”

6. Learned Court of First Instance as well as First Appellate Court after considering evidence led by parties and pleas raised by respective parties concluded issue no.1 and 3 against plaintiff and in favour of defendant no.1. Issue no.2 was also decided against plaintiff. Issue no. 5 and 6 was decided against plaintiff as not pressed. Issue no. 7 was also decided in favour of defendant no.1. It was held that plaintiff is liable to pay deficient court fee within one month from date of receiving the judgment. Suit of plaintiff was accordingly dismissed with cost. Appeal preferred by plaintiff-appellant was also dismissed with similar findings by First Appellate Court.

7. Learned counsel for plaintiff-appellant has argued that plaintiff was deaf and dumb lady and taking advantage of her physical condition, Defendant no.1 has defrauded plaintiff and defendants no. 2 to 5. It is her claim that she had never agreed to sell suit property to defendant no.1 rather it was agreed between parties that in lieu of Rs. 2 Lakhs as loan plaintiff and defendants no. 2 to 5 shall execute mortgage deed in favour of defendant no.1. However, instead of getting mortgage deed, defendant no.1 fraudulently got executed impugned sale deed dated 23.04.2010. That even defendants no. 2 and 3 were incapacitated on account of age in case of defendant no.2 and deficient mental capacity in case of defendant no.3. That defendant no.1 has failed to prove due execution of sale deed as he had not examined attesting witness, scribe and stamp vendor. To prove her case, plaintiff/appellant had examined Baljit Kaur, next friend of plaintiff, through whom plaintiff had preferred present suit. She had reiterated case of plaintiff vide his affidavit, Ex.PW1/A. PW2 also stated about physical

incapacity of plaintiff and that of defendant no.2 and 3 as well as claimed that it is plaintiff and defendants no. 2 to 5 who are in possession of suit land. PW3 Dr. Narinder Kumar Sethi, ENT Specialist proved the disability certificate, PW4 Dr. Lal Chand, SMO, Civil Hospital, Abohar proved Concession Certificate as Ex.P4 issued in favour of the plaintiff. PW5 Jeet Singh, Ex-Sarpanch, also claimed like PW2 i.e. it is plaintiff and defendant nos.2 to 5, who are in joint possession of suit land and also stated about infirmity being suffered by plaintiff, defendant no.2 being old person and that of defendant no.3 having deficient mental understanding. PW6 Ravi Raj, Sarpanch also stated facts in line with facts stated by PW5 Jeet Singh, Ex-Sarpanch and PW7-Jeeta Singh, Ex-member Panchayat. On the other hand, defendant had appeared himself as RW1 and reiterated his version as given in the written statement. He also examined Sh. Paramjit Singh Sahota, DRO, Fazilka as DW2 who had stated to have registered the impugned sale deed as Ex.D1. Inspector/SHO Police Station Sadar Fazilka Jagdish Kumar was examined as PW3, who proved his report Ex.DW3/A in matter filed by Baljeet Kaur (plaintiff/appellant) against defendant no.1.

8. After considering above-noted evidence led by parties, both the Courts, below had held that plaintiff has failed to prove any fraud or misrepresentation on the part of defendant no.1 as was pleaded by her. On consideration of evidence and contentions raised by learned counsel for the plaintiff, I am in agreement with the concurrent findings of facts recorded by learned Courts below.

9. It is worth noting that in the present case plaintiff alone had not executed the impugned sale deed. The impugned sale deed dated

23.04.2010 was executed by plaintiff along with defendant nos.2 to 5. It is also established on record that defendant no.2 is mother of plaintiff whereas defendant no.3 is her brother and defendant nos.4 and 5 are plaintiff's sister. Though plaintiff has claimed that she as well as defendant nos.2 and 3 were incapable as plaintiff was deaf and dumb by birth whereas due to advance age, her mother i.e. defendant no.2 was not only hard of hearing but was not having mental capacity to understand the things. Similarly, plaintiff has claimed that her brother defendant no.3 was also mentally incapable. However, no medical evidence has been led by plaintiff to show that either defendant no.2 or defendant no.3 were incapable. Though the plaintiff has relied upon evidence of PW2, PW5, PW6, PW7 Sarpanches, Ex-Sarpanch and Member of Panchayat etc. who had asserted that defendant nos. 2 and 3 were also physically handicapped and lacked mental capacity to understand nature of transaction i.e. execution of sale deed in favour of defendant no.1. However, their evidence cannot be relied upon as the facts being stated by plaintiff regarding physical and mental capacity of defendant nos. 2 and 3 could have been easily proved by their medical record as was done in the case of plaintiff. In case of plaintiff, plaintiff has duly led evidence of Doctors PW3 and PW4 who had duly asserted that plaintiff was deaf and dumb by birth and have proved disability certificate/Concession Certificate issued in favour of plaintiff. However, no such evidence has been led in case of defendant nos.2 and 3. Moreover, in the present case plaintiff and defendant nos. 2 and 3 were not alone when they executed the impugned sale deed. They were accompanied by their sisters i.e. defendant nos. 4 and 5 who were not under any sort of medical disability or had any reasons for

not understanding the nature of transactions. Admittedly, in the present case plaintiff-appellant has duly admitted to have appeared along with her mother, brother and sisters before Sub-registrar & having executed document i.e sale deed on 23.04.2010. Though plaintiff has claimed that she had gone there to execute mortgage deed. However, there is no material to conclude that plaintiff had gone and understood the transaction to be a mortgage transaction and not sale transaction.

10. The evidence of PW2 Sub-registrar in the present matter is relevant and clinches the issue in favour of defendant no.1. He had specifically asserted that before execution of sale deed he had made plaintiff understand by making gestures. This evidence of Sub-registrar, who is totally an independent person and has got no reasons to depose against plaintiff and in favour of defendants goes to show that the transaction of sale was fully understood by plaintiff and defendant nos.2 to 5 before executing the sale deed. Admittedly, PW1 Baljit Kaur, next friend of plaintiff had not gone with the plaintiff for execution of impugned sale deed. She has not even stated to have been present at the time of alleged conversation regarding loan amounting to Rs. 2 Lakhs. There is no material or evidence which can show that plaintiff and defendant nos. 2 to 5 ever had any talk regarding borrowing Rs. 2 Lakhs in lieu of execution of mortgage deed. No incapacity was attached with defendant Nos. 4 and 5, sisters of plaintiff. However, even they were not examined to prove allegations made by plaintiff in her statement. Plaintiff is conveniently silent about defendant nos. 4 and 5 and could not show that defendant nos. 4 and 5 had ever protested regarding execution of sale deed which plaintiff has challenged.

The fact that defendant nos. 4 and 5 along with plaintiff and defendant nos. 2 and 3 had duly executed the sale deed and had never objected or raised any challenge to said sale deed falsifies the claim of plaintiff that she never intended to execute sale deed but was defrauded by defendant no.1. The onus to prove fraud was upon plaintiff-appellant which she has failed to discharge.

11. Faced with above conclusion, learned counsel for the appellant has argued that it was for defendant no.1 to prove due execution of sale deed and since defendant no.1 has failed to examine attesting witness, scribe and stamp vendor, therefore, he has failed to prove due execution of sale deed. However, I do not find any merit in the arguments raised on behalf of appellant. It is to be noted that execution of sale deed is not being disputed by plaintiff or defendant nos. 2 to 5. Defendant nos. 2 to 5 have never made any complaint against execution of sale deed nor had preferred to file any suit. Plaintiff has duly admitted to have appeared for her signatures as well as that of defendant nos. 2 to 5 over sale deed and having appeared before Registrar for execution of document. Execution of document though she claimed the said document was different is not being challenged. In view of admission regarding signatures of plaintiff over sale deed and her presence before Sub-registrar which is duly supported by evidence of DW1 i.e. defendant no.1 and that of DW2 Sub-registrar who had actually executed the sale deed due execution of sale deed is established.

12. In view of above admitted facts, it was for plaintiff to show that execution of sale deed was never intended and she had agreed to execute mortgage deed. However, no evidence in this regard has been led by

plaintiff-appellant and therefore, learned Courts below have rightly recorded findings on issue no. 1 to 3 against the plaintiff. No other argument has been raised on behalf of learned counsel for the appellant. No fault with the impugned judgments and decrees can be found. Finding of learned Courts below on all issues is affirmed. Appeal is devoid of merit.

13. Dismissed.

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

22.08.2025
Janki

(PARMOD GOYAL)
JUDGE

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