

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****213****RSA-1445-2012 (O&M)****Date of decision: 04.12.2025****Deep Singh****...Appellant(s)****Vs.****Rakesh Kumar and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

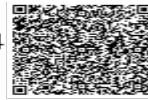
Present:- Mr. Ramneek Vasudeva, Advocate for the appellant.

Mr. Rajiv Kataria, Advocate for the respondents through V.C.

NIDHI GUPTA, J.

Present second appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned Courts below, whereby suit filed by the appellant for declaration that Sale Deed dated 08.12.1983 allegedly got executed in favour of the defendant and pertaining to the suit plot, is void and illegal and not executed by the owner/plaintiff and is liable to be set aside; **and** that the mutation No. 20476 wrongly entered in favour of the defendant on the basis of said alleged sale Deed dated 08.12.1983 is also liable to be set aside; **and** for permanent injunction; has been dismissed by both the Courts below.

2. It was the pleaded case of the appellant/plaintiff that Teja Singh, father of the present appellant was owner of vast chunk of land in various khasra numbers within the revenue estate of Taraf Saidan in Hadbast No. 172, presently known as Sunder Nagar, Mahavir Colony,

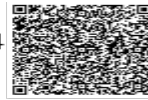


Ludhiana. After the said area was taken into the Municipal limits, plaintiff had sold certain pieces of land; but had kept the suit property for himself maintaining ownership. It was pleaded that on 26.06.1963 when the plaintiff accompanied by his son/the present appellant visited the spot, he found defendant alongwith certain others claiming himself to be owner on the basis of Sale Deed dated 08.12.1983 allegedly executed in his favour by the plaintiff. Plaintiff requested defendant several times to admit his claim, however to no avail. Hence, present suit was filed on 16.07.1993.

3. Upon appraisal of the pleadings and the evidence led by the parties, the Id. Civil Judge (Junior Division), Ludhiana had dismissed the suit of the plaintiff vide judgment and decree dated 24.03.2009. The Civil Appeal filed by the plaintiff was also dismissed by the learned Additional District Judge, Ludhiana vide judgment and decree dated 18.01.2012. Hence, the present second appeal by the plaintiff.

4. It is *inter alia* submitted by learned counsel for the plaintiff that the defendant has failed to prove the Sale Deed dated 08.12.1983 allegedly executed by the plaintiff in favour of the defendant. The defendant has not produced any attesting witness, or Scribe, or stamp vendor to prove the said Sale Deed. Although learned Trial Court had duly framed issue No.2 in this regard, however, defendant has failed to discharge the onus place upon him to prove the said Sale Deed. Thus, requirement of Section 68 of Indian Evidence Act has not been followed.

5. It is further submitted that the utter falsity of the case set up by the defendant is borne out from the fact that the alleged Sale Deed is



of the year 1983; whereas defendant had applied for water and electricity connection of the suit property only in the year 1993. Ld. Counsel submits that it is the case of the defendant that he had come into possession of the suit property in the year 1983. It is contended that the suit property being a house, the same could not have been habitable or operational without water and electricity connection. As such, it is clear that defendant has fraudulently prepared the Sale Deed.

6. Learned counsel further submits that appellant had disputed his signature over the alleged Sale Deed; and plaintiff had proved his case by examining PW1 Handwriting Expert P.S.Ahuja who had submitted his report Ex.P1 and Ex.P2 in which he had clearly mentioned that signature of the alleged Sale Deed is different from the admitted signature of the plaintiff Teja Singh. Admittedly, no evidence in rebuttal was led by the defendant. Thus, suit of the plaintiff could not have been dismissed.

7. It is lastly submitted by learned counsel for the appellant that the learned Courts below have also erred in relying upon report of the Local Commissioner Ex.DW15 which was presented in another civil suit, which is not permissible as per law. 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. *Per contra*, learned counsel for the respondents/defendants vehemently opposes submissions made on behalf of the appellant and submits that concurrent findings of fact have been given by learned Courts below after appraising evidence on record and the same cannot be gone



into by this Court in Second Appeal. He accordingly prays for dismissal of the present Appeal.

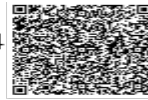
9. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in great detail. I find no merit in the submissions made on behalf of the appellant.

10. The clear case of the appellant is that Sale Deed dated 08.12.1983 is a result of fraud. However admittedly, plaintiff has miserably failed to prove the any fraud alleged to have been committed by the defendants upon the plaintiff. No doubt, the learned Trial Court had framed issue No.2 as follows: -

“Whether the plaintiff executed the sale deed dated 08.12.1983 in favour of the defendant of the suit property for consideration? OPD.”

11. However, the onus to prove the said issue would fall upon the defendant only once the appellant proves the fraud alleged by him. Only then will the defendant be required to prove the authenticity and validity of the Sale Deed as per issue No.2.

12. It has also been contended by the plaintiff that fraud is proved from the report of the Handwriting Expert Ex.P1 which was proved by PW1 P.S.Ahuja Handwriting Expert. However, evidence of PW1 cannot be taken into account as it remained incomplete as he did not appear for cross-examination. Even PW2 Ranjit Singh examined by the plaintiff failed to turn up for cross-examination. PW3 had appeared and stated that plaintiff is in possession of the suit property. However, PW3 has failed to

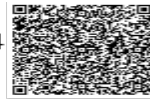


stand the test of cross-examination *in-as-much* as he had made many mis-statements of fact in his cross-examination: to the effect that the suit property measures 1000 sq.yd., whereas in actual fact, suit property measures 400 sq.yds. etc. which showed that he was not at all familiar with the facts of the case. As such, no weightage can be given to the evidence of PW3 as well.

13. It has also been found by the learned Courts below that another Sale Deed Ex.DX/1 was admittedly executed by the plaintiff which was witnessed by the same marginal witnesses. Therefore, simply because disputed Sale Deed is attested by Lambardar of some other area, the same cannot be held to be forged and fabricated; especially in view of the fact that plaintiff has failed to lead any evidence in support of his contention that the Sale Deed is fabricated document.

14. Contention of the plaintiff that defendant has failed to lead any rebuttal evidence regarding the report of Handwriting Expert is incorrect. The defendant had duly examined DW7 Navdeep Gupta, Handwriting Expert who had proved on record his report DW7/A-1 and had opined that signature of the plaintiff on both the Sale Deeds is tallying with each other. In fact, no evidence was led by the plaintiff to rebut the same. The mutation Ex.D4 sanctioned on the basis of the impugned Sale Deed dated 08.12.1983 Ex.P1 was sanctioned in the presence of the plaintiff which is evident from the recital in the mutation Ex.D4 itself.

15. As regards argument of the plaintiff that defendant had applied for water and electricity bill only in the year 1993; whereas



possession was allegedly delivered to him in 1983, the said argument is also liable to be rejected as Defendant had placed on record judgment and decree Ex.D12 and Ex.D13 respectively, passed in a previous suit for permanent injunction filed by the present defendant against the present appellant, in respect of the present suit property, which was decreed in favour of the defendant; wherein defendant was held to be in possession of the suit property. Even as per report of Local Commissioner DW5, Anil Kaushal Advocate, the defendant was found to be in possession of the suit property. Even PW3 in his evidence has pleaded ignorance regarding the availability of water supply and sewerage connection in the suit property and as to in whose name, such connection stands. Even when a specific suggestion was put to PW3 as to whether the suit property was purchased by the defendant from the plaintiff in the year 1983 for an amount of Rs.16,000/-, PW3 was not able to deny the same as he has stated that he did not remember. Thus, plaintiff has failed to establish his possession over the suit property; whereas on the other hand, defendant on the basis of oral and documentary evidence has proved his possession. In any event, plaintiff case has to stand on its own legs.

16. Last but not the least, plaintiff has merely filed a declaratory suit without seeking relief of possession. As such, suit of the plaintiff was not maintainable. It is proved by cogent evidence on record that defendants are in possession of the suit property. Thus, suit of the plaintiff for mere declaration without possession is not maintainable. I am in agreement with the learned Courts below that plaintiff has no locus standi

or cause of action to file the instant suit as he has already sold the suit property to the defendant by way of registered Sale Deed dated 08.12.1983.

17. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.

18. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.

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

04.12.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No