



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

Reserved on: 23.05.2025

Pronounced on: 29.05.2025

1.

RSA-3703-2018 (O&M)

Hari Singh

...Appellant

Vs.

Sukh Raj Singh and others

...Respondents

2.

RSA-3861-2018 (O&M)

Hari Singh

...Appellant

Vs.

Sukh Raj Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.S. Dadwal, Advocate
 Ms. Neha Jain, Advocate
 for the appellant(s).

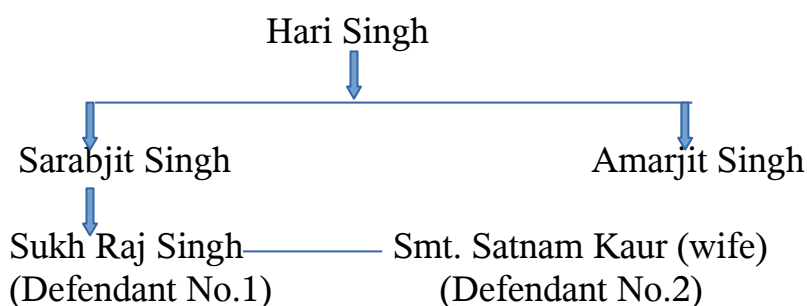
 Mr. Deepak Verma, Advocate
 for respondents No. 1 and 2.

ANIL KSHETARPAL, J.

1. With the consent of learned counsel representing the parties, two connected regular second appeals, namely, RSA-3703-2018 and RSA-3861-2018 filed against separate but connected judgments passed by the trial Court as well as the First Appellate Court in two connected suits, shall stand disposed of by this common order.



2. Defendant No.1 is grandson of the plaintiff, whereas, defendant No.2 is the wife of defendant No.1, in other words, wife of grandson. The following genealogy would illustrate their relationship:-



3. On 25.01.2010, the plaintiff executed two registered sale deeds, one with respect to 83 kanals 04 marlas 04 sarsahis agricultural land, in favour of defendants No. 1 and 2 and second with respect to a residential house constructed over an area of 01 kanal 06 marlas 06 sarsahis located in village Aur, Tehsil Nawanshahr, District Shaheed Bhagat Singh Nagar (SBS Nagar), Punjab. Subsequently, the plaintiff filed two separate suits seeking a declaration that he is the owner in possession of the suit property and the sale deeds are null and void, having been executed as a result of fraud, alongwith the consequential relief of decree for permanent injunction, which have been dismissed by both the Courts below.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

5. During the pendency of the first appeal, the appellant filed an application for seeking amendment in the prayer made in the suits, which was allowed by the First Appellate Court. Additional prayer made by the appellant is extracted as under:-



"It is further prayed that any other relief to which the Hon'ble Court considers appellant legally and equitably entitled to such as value ad market price of the property may also be granted to the appellant and against respondents with costs."

6. Learned counsel representing the appellant has also filed his synopsis in support of his oral submissions. He has referred to the following submissions:-

- *Sale consideration qua sale deeds not proved.*
- *Defendants not able to prove their case as none of the defendants or their witness appeared before the witness box.*
- *Defendants are incumbent to prove the fact that the alleged sale deed are genuine and valid.*
- *Provisions of section 20 of Specific Relief Act, 1963 has not been taken into consideration.*
- *Though the amendment with regard to the raising the relief of recovery was allowed by the appellate court but no alternative relief was granted by the appellate court.*

7. *Per contra*, learned counsel representing the respondents while referring to the statement of PW/2-Sh. Harnek Singh, marginal witness of the sale deed, submits that there is no error in the judgments passed by the Courts below.

8. During the pendency of this appeal, learned counsel representing the appellant contended that the plaintiff was allowed to amend the plaint to



recover the sale consideration, hence, the Court passed the following order on 30.01.2019:-

"Learned counsel for the appellant submits that the appellant besides challenging the sale deed has sought recovery of the amount of sale consideration mentioned in the sale deed dated 25.01.2010 from defendants/respondents No. 1 and 2. The trial Court instead of allowing recovery of that amount has observed that the appellant can file a separate suit to recover the same. The Appellate Court allowed the amendment of the plaint as sought by the appellant seeking decree for recovery of consideration amount but that relief was not allowed.

The question which arises for consideration is as to whether the appellant has paid the court fee for the amount he has sought to be recovered. Learned counsel for the appellant fairly submits that no court fee was paid on the amount sought to be recovered. He seeks adjournment to have instructions as to whether the appellant is ready to pay the court fee on the amount sought to be recovered for the civil suit, appeal and RSA.

List on 22.02.2019.

Copy of this order be placed on the file of other connected matter."

9. Thereafter, the appellant deposited the amount on account of Court fee.

10. It is not in dispute that at the time of execution of the sale deeds, there is a recital admitting the receipt of sale consideration by the plaintiff in



his house at village Garh Padhana, Tehsil Nawanshahr, District Shaheed Bhagat Singh Nagar (SBS Nagar), Punjab. Hence, onus lay upon the plaintiff to prove that no sale deed was paid. Reliance can be placed on the judgment of the Hon'ble Supreme Court in 'Smt. Rani and another vs. Smt. Santa Bala Debnath and others', 1970(3) SCC 722. The plaintiff did make a statement that he did not receive the sale consideration, however, when PW/2-Harneek Singh appeared, he stated that the sale consideration was paid to the plaintiff in his house at village Garh Padhana. He also deposed that the sale deeds were read over to Sh. Hari Singh not only by the Scribe but also by the Registrar and he was in sound disposing mind. Mere oral assertion of the plaintiff is not sufficient to discard the recital in the sale deed. Moreover, the plaintiff and the defendants are closely related as defendants No.1 and 2 are his grandson and his wife, respectively.

11. Adverse inference against the defendants can only be drawn if they failed to produce the evidence which was in their possession. The defendants in their evidence have produced certain documents. Onus lay upon the plaintiff to prove that the sale deed was result of fraud. However, he miserably failed. It is not necessary for the Court to draw adverse inference for failure of the party to enter the witness-box in all the cases. Section 114 of the Indian Evidence Act, 1872, provides that if the Court comes to conclusion that evidence, which was in possession of the party but was not produced, can be presumed to be unfavourable to the person who withholds it. In this case, such eventuality does not arise.



12. The next submission of learned counsel representing the appellant is misconceived because the onus was not upon the defendants to prove that the sale deed was genuine and valid. Similarly, Section 20 of the Specific Relief Act, 1963, is not applicable in the present case, as it pertains to grant of decree for specific performance.

13. The last submission of learned counsel representing the appellant also lacks substance because before the Appellate Court the appellant never sought recovery of the amount of sale consideration. He only sought compensation, which is equivalent to the market value of the property. Moreover, the application for amendment was filed in the year 2018. It will not be appropriate to record any finding in absence of proper pleadings, issue and the evidence produced by the parties. Additionally, the question as to whether the relief of recovery was prayed for, within the prescribed period of limitation, is also debatable because the sale deeds were executed in January 2010, whereas, the amendment was filed in the year 2018.

14. Keeping in view the forgoing discussion, no ground to interfere is made out with the concurrent findings of fact arrived at by the Courts below.

15. Hence, both the appeals are dismissed.

16. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

29.05.2025

neeraj

Whether speaking/reasoned :

Yes No

Whether Reportable :

Yes No