



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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RSA-4136-2015(O&M)
Date of decision: 23.03.2026

Vishal (minor through his mother) & Anr.

...Appellant(s)

Vs.

Smt. Krishna Devi & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

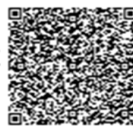
Present:- Mr. Ajay Jain, Advocate
for the appellants.

Mr. S.S. Khurana, Advocate
for the respondents.

NIDHI GUPTA, J.

Present appeal has been filed by the defendants No.1 and 2 against the concurrent judgments and decrees of the learned Courts below whereby suit filed by the plaintiffs/contesting respondents No.1 and 2 herein, for declaration and possession along with consequential relief of permanent injunction, has been decreed by both the Courts below.

2. Brief facts of the case are that plaintiffs had filed the instant Civil Suit seeking declaration that the Release Deed No.133 dated 24.04.2007 and Mutation No.1595 dated 28.05.2007 are null and void to the extent of land purchased vide Sale Deed No.594 dated 06.06.2007 in compliance of



registered Agreement to Sell dated 17.11.2006; and further that the plaintiff No.1 is entitled to get her name incorporated in the Revenue Record.

3. It was the pleaded case of the plaintiffs that defendant No.3 Pat Ram was the owner in possession of the suit property measuring 3 kanal 17 marla. He entered into an Agreement to Sell No.2313 dated 17.11.2006 with the plaintiff No.2 for sale of the suit land for total sale consideration at the rate of Rs.20 lakh per acre. Defendant No.3 had received Rs.2 lakh as earnest money at the time of execution of Agreement. Sale Deed was to be executed by 30.06.2007. Accordingly, defendant No.3 had executed Sale Deed No.594 dated 06.06.2007 and had received the entire sale consideration before the Sub-Registrar. It was further pleaded that however, when plaintiff No.1 approached the Halqa Patwari for incorporating Sale Deed No.594 dated 06.06.2007 in the Revenue Record, she came to know that defendant No.3 had already disposed of his entire share in the agricultural land by way of Release Deed No.133 dated 24.04.2007 in favour of defendants No.1 and 2 i.e. the appellants herein. It was alleged that Defendant No.3 in collusion with defendants No.1 and 2 and their mother Savita, cheated the plaintiffs with mala fide intention. Accordingly, a declaration was sought that the said Release Deed is illegal, null and void. The plaintiffs had approached the defendants to get the Release Deed cancelled but to no avail. As such, present Suit was filed on 26.07.2007.



4. Defendant/respondent No.3 had filed written statement supporting the case of the appellants and submitting that Plaintiff No.1 is not a bona fide purchaser of the suit land. Defendant No.3 Denied execution of Agreement to Sell dated 17.11.2006 and receipt of earnest money. Alleged Agreement to Sell dated 17.11.2006 and the Sale Deed dated 06.06.2007 are without consideration, based upon fraud and misrepresentation. It was alleged that Plaintiffs were having complete knowledge regarding Release Deed dated 24.04.2007 and Mutation No.1595 dated 28.05.2007. It was further contended that Release Deed executed in favour of defendants No.1 and 2/appellants as they were having pre-existing rights in the suit property.

5. The defendants No.1 & 2/appellants had also filed written statement, resisting the suit and submitting that Appellants are owners in possession of 1/6th share in the land owned and possessed by defendant No.3 including the suit land. Defendant No.3 never entered into Agreement to Sell in favour of the plaintiffs. Sale Deed dated 06.06.2007 is an illegal transaction between the plaintiffs and defendant No.3. No payment made before Sub-Registrar. It was further contented that the appellants are not bound by the terms of Agreement dated 17.11.2006 and Sale Deed dated 06.06.2007. Whereas Plaintiffs are bound by the terms of Release Deed dated 24.04.2007.

6. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, learned Additional Civil Judge (Senior Division), Rewari



had decreed the suit of the plaintiffs vide judgment and decree dated 31.08.2012 in the following manner:-

“32. In view of aforesaid discussion and findings of this Court on foregoing issues, it is held that the plaintiffs have successfully proved that the registered agreement to sell dated 17.11.06 and sale deed no.594 dated 6.6.07 were duly executed by the defendant no.3 in favour of the plaintiffs. Hence, the suit of the plaintiffs succeeds and is hereby decreed with cost and release deed bearing No.133 dated 24.4.07 and mutation no. 1595 dated 28.5.07 are declared as null and void and are hereby set aside. Decree-sheet be prepared accordingly and file be consigned to the record-room after due compliance.”

7. The Civil Appeal filed by the defendants No.1 and 2 was dismissed by the Id. Additional District Judge, Rewari vide judgment and decree dated 16.04.2015. Hence, present second appeal by the defendants No.1 and 2.

8. It is inter alia submitted by learned counsel for the appellants that the learned Courts below were in error in non-suiting the appellants as they failed to appreciate that on date of execution of the Sale Deed i.e. 06.06.2007 in favour of plaintiff No.1, the defendant No.3 Pat Ram was no longer owner of the suit land as he had already executed Release Deed dated 24.04.2007 in favour of his minor sons i.e. the appellants herein. It is submitted that prior to the execution of the Sale Deed, plaintiffs did not make any enquiry from the Registration/Revenue Department or else, they would have discovered that on date of execution of the Sale Deed, defendant No.3 was not the owner of the



suit land. It is contended that the Release Deed No.133 dated 24.04.2007 in favour of the defendants No.1 and 2 was a registered document. Even Mutation No.1595 dated 28.05.2007 stood sanctioned in favour of the appellants on the basis of the said Release Deed. Possession of the suit property is with the appellants as also admitted by the plaintiff No.2. Thus, the plaintiffs had complete knowledge of the Release Deed prior to execution of the Sale Deed.

9. It is further submitted that the present Suit has been filed by the plaintiffs only on the strength of Agreement to Sell dated 17.11.2006. It is established position in law that as per Section 54 of the Transfer of Property Act, an Agreement to Sell confers no title. Thus, at best, the plaintiffs could have filed a Civil Suit for specific performance. It is argued that if this practice is allowed, then there would be no necessity to file suit for specific performance. Under the Agreement to Sell, the plaintiffs have limited right.

10. It is further submitted that the Courts below while decreeing the suit filed by the plaintiffs have erred in holding that the execution of the agreement to sell and the Sale Deed are duly proved on the file. The plaintiffs in their plaint had categorically averred that defendant No. 3 had executed the Sale Deed bearing No. 594 dated 06.06.2007 in favour of plaintiff No. 1 and had received the entire sale consideration amount before the Sub Registrar Dharuhera. However, a bare perusal of the Sale Deed Ex.PW1/B dated 06.06.2007 would reveal that no amount had been paid by plaintiff No. 1 to



defendant No. 3 at the time of execution of Sale Deed before the Sub Registrar Dharuhera. Therefore, the entire story propounded by the plaintiffs in respect of payment of balance sale consideration before the Sub Registrar at the time of registration of the Sale Deed stands not proved. It is by now a well settled a proposition of law that once a party alleges that the consideration amount was paid in the presence of the Registrar and there is no endorsement to that effect of the Registrar on the Sale Deed, it would be deemed that no consideration amount passed to the seller inspite of the fact that there was recital in the Sale Deed regarding the payment of consideration amount. Reference in this regard may be made to the case law reported as 2007(4) CCC 746.

11. In continuation of the above submissions, learned counsel further submits that "Sale" is defined in Section 54 of the Transfer of Property Act, wherein any transfer made without consideration cannot be considered a valid sale. In the present case, the plaintiffs have clearly averred in the Suit that entire sale consideration was paid by them to the defendant No.3 before the Sub-Registrar. However, a bare reading of the Sale Deed (Ex.PW1/B) shows that Sub-Registrar has clearly recorded that no amount was paid before him. It is contended that therefore, once the plaintiffs have failed to establish passing of sale consideration, no valid sale was executed in their favour. It is accordingly prayed that the impugned judgments suffer from material error and deserve to be set aside.



12. In support of his contentions, learned counsel relies upon judgments of this Court in **Ramesh Chander v. Mangat Ram (Punjab And Haryana) : Law Finder Doc ID # 532764**; **Krishan Kumar v. Ram Pal (Punjab And Haryana) : Law Finder Doc ID # 659457**; **Kuldeep Singh v. Ram Pyari (Punjab And Haryana) : Law Finder Doc ID # 827235**; and judgment of Patna High Court in **Dhanbarti Koerin v. Shyam Narain Mahton, (Patna) : Law Finder Doc ID # 150028**.

13. Per contra, learned counsel for the plaintiffs vehemently opposes the submissions advanced on behalf of the appellants and submits that the above submissions are beyond pleadings. It is submitted that in the written statement to the suit, the appellants had taken the plea that the suit land is ancestral in the hands of Pat Ram. It had further been averred in the written statement that on the basis of a Family Settlement, the impugned Release Deed had been executed. However, the appellants had failed to lead any evidence in support of the suit land being ancestral; or even in respect of any alleged Family Settlement between the parties. Consequentially, the impugned Release Deed had been set aside.

14. It is submitted that the second plea taken by the appellants before the learned Courts below was that at the time of execution of the Agreement to Sell, Pat Ram had been intoxicated. However, in this regard, no evidence was led by the appellants. It is argued that on the contrary, the Agreement to Sell



as well as the Sale Deed are both registered documents and therefore, there is presumption in favour of the plaintiffs.

15. It is lastly submitted that defendant No.3 had not stepped into the witness box. Defendant No.3, the executant of the Sale Deed has not challenged the same. The appellants being strangers to the Sale Deed, have no locus to challenge the same. It is accordingly prayed that the present appeal be dismissed.

16. In rebuttal, learned counsel for the appellants submits that non-examination of defendant No.3 cannot be inferred against the appellants in view of the fact that the plaintiffs had to prove their own case. It is pointed out that defendant No.3 had duly filed his written statement stating therein that no amount had been paid to him at the time of execution of Sale Deed. It is accordingly prayed that the present appeal be allowed and impugned judgment be set aside.

17. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the record in detail. I find no merit in the submissions advanced on behalf of the appellants.

18. Perusal of record of the case shows that the plaintiffs had duly proved the Agreement to Sell dated 17.11.2006 (Ex.PW1/A) as also the Sale Deed dated 06.06.2007 (Ex.PW1/B) from the evidence of PW1 Pardeep Kumar Aggarwal, Deed Writer, who had deposed that he had scribed the Agreement to Sell dated 17.11.2006 and typed the Sale Deed No.594 dated 06.06.2007 on



instructions of defendant No.3 Pat Ram. Plaintiffs had also examined PW2 Satish Kumar, Registration Clerk, who had deposed that he had seen the original Agreement to Sell dated 17.11.2006, which is registered by their office. Both the above-said documents being registered documents, there is presumption of truth attached to the same. Further, PW4 Hoshiar Singh, Lambardar Attesting Witness vide his Affidavit (Ex.PW4/A) had deposed that he had affixed his signatures as Attesting Witness over the Agreement to Sell dated 17.11.2006. PW7 Rajbir, Attesting Witness to Agreement to Sell dated 17.11.2006, has also deposed that on 17.11.2006, defendant No.3/Pat Ram had executed the said Agreement in favour of the plaintiffs and received sum of Rs.2 lakh as earnest money. PW7 further stated that he had affixed his signatures on the Agreement to Sell dated 17.11.2006 (Ex.PW1/A) being Attesting Witness. Thus, the Agreement to Sell dated 17.11.2006 (Ex.PW1/A) was duly proved in accordance with law.

19. Further, PW6 Randhir Singh, Attesting Witness of the Sale Deed dated 06.06.2007, had deposed that on 06.06.2007, Pat Ram had executed a registered Sale Deed in respect of land measuring 3 kanal 17 marla in favour of the plaintiff No.1. PW6 further deposed that he and Niranjan Lal plaintiff No.2/PW5 and Prithvi, Lambardar had affixed their signatures and thumb impressions as Attesting Witnesses over the Sale Deed. It is most important to note that PW6 has categorically deposed that the balance sale consideration of Rs.7,62,500/- was paid to Pat Ram/defendant No.3 in his presence. Plaintiffs



have also examined PW8 Mukesh, who had deposed vide his Affidavit (Ex.PW8/A) that on 06.06.2007, Pat Ram/defendant No.3 had executed a registered Sale Deed in favour of the plaintiffs; whereupon he/PW8 had affixed his signatures on behalf of Krishna Devi over Sale Deed. PW8 has also deposed that he had made payment of Rs.7,62,500/- in cash to Pat Ram. It was also proved from the evidence of attesting witness. PW5. From the above unrefuted evidence, execution of Sale Deed dated 06.06.2007(Ex.PW1/B), and payment of balance sale, consideration of ₹7,62,500/- stands proved.

20. Thus, from the above voluminous evidence, it is established that the Agreement to Sell and the Sale Deed, as also payment of balance sale, consideration stands duly proved. All the above-said witnesses were cross-examined at length by the defendants, but they failed to shatter the above-said testimonies of these witnesses.

21. It is to be noted that in their written statement, the appellants had taken the plea that the suit land is ancestral in nature; and therefore, defendant No.3 was not competent to dispose of the same vide the impugned Sale Deed. However, in this regard, there are concurrent findings of fact that the appellants were unable to prove that the suit land was ancestral in nature. In this situation, the appellants are strangers to the transaction; and can therefore not question the Sale Deed executed by their father/defendant No.3 in favour of the plaintiffs. Only the defendant No.3 could have challenged Sale Deed. Therefore, it was only defendant No.3 who was competent to question



the transaction; and appellants being strangers to the transaction are not competent to do so. However, defendant No.3 has not stepped into the witness box. Therefore, contention of the defendants that plaintiffs forcefully gave alcohol to defendant No.3 under the influence of which he had executed Agreement to Sell, remains unproved.

22. In any event, perusal of Sale Deed dated 06.06.2007 (Ex.PW1/B) shows that the same is a registered document. Photographs of the parties affixed thereupon as also their signatures clearly established that parties have appeared before the Sub-Registrar. As such, it cannot be said that the defendant No.3 has executed the said Sale Deed under the influence of alcohol.

23. Contention of the appellants that on date of execution of Sale Deed, defendant No.3 was not owner of the suit land as the same already stood released in favour of the appellants vide impugned Release Deed dated 24.04.2007, is of no help to them as no doubt, defendant No.3 had executed a Release Deed in favour of the appellants but the same was executed after execution of Agreement to Sell. The said Release Deed is therefore, hit by the principle of lis pendens.

24. From the statements of the witnesses, it was clearly proved that defendant No.3 had signed twice on the Agreement to Sell. It is also clear from the record that both documents i.e. Agreement to Sell as well as the Sale Deed bore the signatures of Pat Ram in English; as also the computerised photograph of Pat Ram, which is not being denied by any of the witnesses



including the defendants. In this view of the matter, a mere mis-avermment made in the plaint to the effect that sale consideration had been paid before the Sub-Registrar cannot be read to infer that sale is without consideration; especially in view of the fact that both the Attesting Witnesses have admitted passing of the sale consideration. In this regard, relevant findings of the learned First Appellate Court are in Para 30 of the judgment dated 16.04.2015, which read as follows:-

“30. From the discussion of the testimony of aforesaid witnesses of both sides, it is clear that numberdar Hoshiyar Singh and Rajbir who were attesting witnesses of the agreement to sell Ex.PW1/A have fully proved the passing of the earnest money as well as due execution of the agreement to sell in favour of Niranjana. PW Randhir and Mukesh have also proved the passing of the balance sale consideration of Rs.7,62,500/-before registration of the sale deed no.594 dated 6.6.2007, scribe of agreement to sell as well as of sale deed also admitted passing of the consideration. It is pertinent to mention that the attesting witnesses as well as numberdar already knew Pat Ram whose photograph is also admitted on these document by the wife of Pat Ram and other attesting witnesses. It is pertinent to mention that agreement to sell Ex.PW1/A is a registered document upon which Pat Ram signed in English first at the time of execution of the agreement and then at the time of registration before sub registrar. It shows that Pat Ram is not a layman rather he is well educated. All material witnesses have fully supported the plaintiff's case which inspire confidence in the mind of court. Thus it cannot be said that the agreement to sell as well as sale deed dated 6.6.2007 was



registered without passing of the sale consideration. The main argument of learned counsel for the defendant was that at the time of execution of the agreement Pat Ram was not sound state of mind as plaintiff got his signature on the agreement after consuming him liquor. If it was so then Pat Ram could be the best witness to state whether the agreement was a result of his unconscious state of mind or without consideration but he did not turn up into the witness box, though his written statement is on record but in absence of his testimony his pleading cannot take place of formal proof of his pleading. Mere showing passing no amount before sub registrar at the time of registration of sale deed does not mean that sale deed is without consideration because both the attesting witnesses have admitted passing of the sale consideration. No reasonable explanation has been put forward for non examination of Pat Ram and in these circumstance I draw an adverse inference against him because he could not dare to appear into the witness box to test his veracity. I have gone through the detail cross examination of witnesses of both parties there is no evidence on record that at the time of execution of agreement to sell Pat Ram was not in conscious state of mind due to liquor. Had it been so then the scribe, Hoshiyar numberdar and other witnesses must have deposed so. As the agreement to sell was a registered document which bears the presumption of truth unless is not rebutted by leading substantial evidence, which defendants have failed to led on file and thus I am of this considered opinion that Pat Ram with his free consent rightly executed the agreement to sell after receiving Rs.2 lacs as earnest money. Thus he was bound by the agreement but in order to defeat the right of plaintiff-Niranjan, he suffered a release deed



no.133 on 24.4.2007 in favour of his sons (defendants no.1 and 2). Pat Ram was not a layman as alleged by the defendant rather he was very clever and that is why he got executed and registered the sale deed of the suit land in favour of Krishna Devi on pursuance of the agreement to sell dated 17.11.2006. The sale deed has been executed in favour of Krishna with the consent of Niranjana so now it is to be seen whether the release deed creates any right in favour of defendants no,1 and 2, As defendant was bound by the agreement to sell dated 17.11.2006 thus execution of release deed in favour of defendant no.1 and 2 was his malafide act to frustrate the valuable right created in favour of Niranjana and thus the release deed has no value.”

25. Learned counsel for the appellants is unable to dispute or controvert the above-said facts and findings. I am in complete agreement with the aforesaid view taken by the learned Courts below.

26. Thus, in view of the above undisputed facts and findings on record, I find no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below. Moreover, this Court in second appeal has limited jurisdiction to interfere in the concurrent findings of fact rendered by the Courts below; as held by the Hon'ble Supreme Court in **M/s. Shivali Enterprises v. Godawari (Deceased) (SC) : Law Finder Doc ID # 2034559**, as under: -

*“14. This Court, in the case of **Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71**, after considering the scope of interference under the old section 100 of the Civil*



Procedure Code, 1908 (for short "CPC") and Section 41 of the Punjab Act, has observed thus:

"15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact."

15. It could thus be seen that this Court has held that, even when a court exercises jurisdiction under Section 41 of the Punjab Act, it cannot interfere with the findings of fact in second appeal on the ground that the said findings are erroneous, howsoever gross or inexcusable the error may seem to be. It has been held that the findings of fact would also include the findings on the basis of documentary evidence. The jurisdiction under Section 41 of the Punjab Act would be available only when there is a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force."

27. In the present case, no such substantial error or defect in the procedure or law has been made out by learned Counsel for the appellants. The judgments relied upon by learned counsel for the appellants are



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distinguishable on facts and Law. In view of the above, present Regular Second Appeal stands **dismissed**.

28. Pending application(s) if any also stand(s) disposed of.

23.03.2026
Sunena

(Nidhi Gupta)
Judge

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