

In the High Court for the States of Punjab and Haryana at Chandigarh

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RSA No. 2853 of 2005(O&M)

Date of decision: May ,2009

Smt. Khazani daughter of Giani

..Appellant.

Versus

Surja and another

..Respondents

Coram: **Hon'ble Mr.Justice Rakesh Kumar Garg**

Present: Mr. R.N. Sharma, Advocate  
for the appellant.  
Mr.R.K. Gupta, Advocate  
for the respondent No.1.

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Rakesh Kumar Garg,J.

This is plaintiff's second appeal challenging the judgment and decree of the lower Appellate Court whereby the appeal filed by the defendant No.1 against the judgment and decree of the trial Court was accepted and suit of the plaintiff was ordered to be dismissed.

The brief facts of the case are that the plaintiff/appellant and defendant/respondent No.2 were recorded owners of 1/14<sup>th</sup> share in the agricultural land comprised in Khewat No.363, Khatauni No.446, measuring 46 Kanals 1 Marla situated in village Bhawar, Tehsil Gohana, District Sonapat. The defendant/respondent No.1 Surja is the real brother of the plaintiff/appellant and respondent/defendant No.2 and on 20.9.97 he brought the appellant and respondent No.2 to Gohana and got their thumb impression on some papers with assurance that the land will be transferred in favour of all the three brothers namely, Deepa, Surja and Ramphal the real brothers of the appellant and respondent No.2. The respondent No.1 got executed sale deed No.1702 dated 26.9.97. The same was registered in his favour and mutation No.11-A was also entered in the name of respondent No.1 Surja. The sale deed and the mutation sanctioned on the basis of it were challenged by way of suit for declaration and permanent injunction in the Court of Additional Civil Judge,(Senior Division),

Gohana with a prayer that the sale deed and mutation were wrong, illegal, null and void and not binding on the right of the plaintiff/appellant and defendant/respondent No.2 on the grounds that the plaintiff and defendant No.2 never executed and registered sale deed in favour of the plaintiff that no possession of the land was ever delivered to the defendant/respondent No.1 that no sale consideration was ever passed and the sale consideration shown to be paid to the appellant and respondent No.2 was false and fictitious that defendant/respondent No.1 is the real brother of the plaintiff and defendant No.2 and in case, there was any such transaction, then certainly the defendant No.1 would have filed the suit for declaration instead of getting the sale deed executed and registered and that sale deed is the result of fraud and misrepresentation and the defendant/respondent No.1 has only obtained the signatures of the plaintiff/appellant and defendant/respondent No.2 merely on asking that same are for giving the security; that no notice regarding sanctioning of mutation was ever given to the plaintiff and defendant No.2 which was mandatory.

In the written statement, contesting defendant No.1 took the stand that plaintiff and defendant No.2 have sold their shares to him. The grounds on which the sale deed was assailed were stated to be wrong and denied. It was further replied that plaintiff and defendant No.2 appeared before Deed Writer and Sub Registrar having admitted the contents of the sale deed true and correct, mentioning that suit is liable to be dismissed on account of non-affixation of advoluerum court fee, additional pleas were taken that simple suit for declaration without seeking possession is not maintainable; that plaintiff has no cause of action to file the suit; that plaintiff is estopped by her own act and conduct to file the suit and that she has not come to the court with clean hands. At the end a prayer has been made to dismiss the suit.

Defendant No. 2 was proceeded against ex parte vide order dated 13.8.2002 as she failed to appear in the court.

Replication was filed refuting the contentions of the defendant No.1

and re-affirming the assertions made in the plaint. From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff and defendant No.2 are still owners of 1/14 share of agricultural land comprised in khewat No. 363, Khatoni No. 446, situated in village Bhawar and registered sale deed No. 170 dated 26.9.1977 of 1/12 share and mutation No.11A sanctioned on the basis of it are illegal, null and void, not binding upon the rights of the plaintiff and defendant No.2 on the grounds mentioned in para 4 of the plaint? OPP
2. If issue No.1 is decided in favour of the plaintiff, then whether plaintiff is entitled to the relief of injunction?OPP
3. Whether the suit simpliciter of declaration without relief of possession is not maintainable? OPD
4. Whether the plaintiff has no cause of action to file the present suit?OPD
5. Whether the suit is false and vexatious to the knowledge of the plaintiff ?OPD
6. Whether the plaintiff is estopped from filing the present suit by her own act and conduct ?OPD
7. Whether the Civil Court has no jurisdiction to entertain the present suit?OPD
8. Whether the plaintiff has not come to the court with clean hands?OPD
9. Relief.

Both the parties led evidence. After hearing the arguments, the trial Court vide its judgment and decree dated 14.8.2004 decreed the suit holding that the sale deed and mutation in question were null and void and not binding upon the plaintiff-appellant.

The judgment and decree dated 14.8.2004 passed by the trial Court was assailed by defendant No.1/respondent No.1 pleading that the trial

Court had taken a wrong view that the sale deed in question was the result of misrepresentation as it was proved on record that both the parties had appeared before the Sub Registrar and had appended the thumb impression and their photographs were also taken. It was also pleaded that the suit for declaration simpliciter without seeking possession was not maintainable as the plaintiff was not in possession of the suit land and thus the judgment and decree of the trial was liable to be set aside. The lower Appellate Court vide impugned judgment and decree dated 15.2.2005 accepted the appeal and set aside the judgment and decree of the trial Court resulting into dismissal of the suit.

While allowing the appeal, the lower Appellate Court observed as under:-

“The execution of the sale deed has been proved. The attesting witness who is Lambardar of the village has stated that Khazani and Omi had admitted that they had received the consideration. It is not the case of the plaintiff that market value of the property was more. The plaintiff had admitted that they had wanted to give their property. The plaintiff had set up a plea of fraud but it has not been established beyond all reasonable doubts. The fraud in a civil suit is to be established like any other facts on the basis of preponderance of evidence. The fraud is an act of deliberate deception with a design to secure something from another. In this case the parties were closely related. The sisters are married and had been living in their matrimonial homes. They are not “Parda Nashin” ladies. No inference can be drawn in their favour in the circumstances of the case. The plaintiff had failed to prove that any fraud had been practiced, therefore, the sale could not have been set aside on those grounds. The findings recorded by the lower Court on issue No.1 is reversed. The plaintiff had brought a suit for declaration simpliciter. They are not in possession of the property. The property had been mutated in favour of Surja. His possession is being

recorded thereafter. A suit for mere declaration without seeking possession was not maintainable and the findings recorded on the issue by the lower Court has also to be set aside.

Feeling aggrieved from the judgment and decree of the lower Appellate Court, the plaintiff has filed the present appeal arguing that the following substantial questions of law arise in this appeal for consideration of this Court:-

- “i)Whether the impugned sale deed executed and registered in his favour by the respondent No.1, by way of fraud and misrepresentation is null and void and cannot affect the rights of the appellant and respondent No.2, especially when their intention was to transfer the suit land in favour of all the three brothers ?
- ii) Whether the mutation got some fraud by the respondent No.1 in his favour without giving any notice to the appellant and respondent No.2, is legal and void ?
- iii) Whether the sale deed executed without the sale consideration is valid and legal and sustainable in the eyes of law ?

In support of his case, learned counsel for the appellant vehemently argued that it was proved on the record that defendant No.1 practiced misrepresentation and fraud at the time of execution of the sale deed in question and thus any agreement or contract like the sale deed in question, which is vitiated by fraud and misrepresentation cannot be sustained in the eyes of law. It was further argued that in case the sale deed and mutation sanctioned on the basis of it are set aside, then status of the parties in the suit land will be of co-sharers and therefore, the suit for declaration simpliciter was maintainable and thus the judgment and decree of the lower Appellate Court is liable to be set aside.

On the other hand, learned counsel for the respondent No.1 has supported the findings of the lower Appellate Court and has argued that no substantial question of law arises in this appeal as on appreciation of evidence, a

finding of fact has been recorded by the lower Appellate Court to the effect that the sale deed was proved and further that the plea of fraud set up by the plaintiff-appellant could not be established from the evidence on record and therefore, this appeal is without any merit and is liable to be dismissed.

I have heard learned counsel for the parties. While passing the impugned judgment and decree, the lower Appellate Court on appreciation of evidence has recorded a finding that the execution of the sale deed is proved from the testimony of attesting witness who is a Lambardar of the village and that the plea of fraud as set up by the plaintiff has not been established. The fraud in a Civil Suit is to be established like any other fact on the basis of preponderance of evidence. The fraud is an act of deliberate deception with a design to secure something from another, which is not proved in this case. In the case in hand, parties were closely related. It is not the pleaded case of the appellants that she and her sister are "Parda Nashin" ladies. Thus, no inference can be drawn in their favour in the circumstances of the case. Nothing could be pointed out from the evidence before this Court from which it can be proved that any fraud was practiced upon the appellants.

For the reasons recorded above, I find no merit in the contentions raised by the appellants.

No other point was urged.

Thus, no substantial question of law arises in this appeal.

Dismissed.

May , 2009  
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(RAKESH KUMAR GARG)  
JUDGE

