

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

(1) RSA No. 2736 of 2015 (O&M)
Date of decision: November 30, 2015

Jasvir Singh and another

...Appellants

Versus

Pritam Dass Chela Bhagwan Dass Chela Puran Dass and others

...Respondents

(2) RSA No. 4189 of 2015 (O&M)

Jasvir Singh and another

...Appellants

Versus

Pritam Dass Chela Bhagwan Dass Chela Puran Dass and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

- 1. Whether Reporters of local papers may be allowed to see the judgment ?**
- 2. To be referred to the Reporters or not ?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. Surinder Garg, Advocate,
for the appellant.

K. KANNAN, J. (Oral)

1. Both the appeals are arising out of a suit and the counter-claim filed by the defendants. The suit was filed by the plaintiff on a plea that the plaintiff who was the original owner of the whole of the property had sold under two transactions two different portion of property, one adjacent the other, one in favour of the 2nd defendant on 17.7.1996 and another in favour of the 1st defendant on 13.12.1996. The property sold to the 1st defendant

was re-purchased by a document dated 6.4.1998 and registered on 2.7.1998.

While the plaintiff would admit to the sale made in favour of the 2nd defendant and the property purchased thereunder as being in possession of defendants No. 1 and 2 and demarcated in the portion marked ABCD, the true contest was only with reference to the remaining portion of the property described as AHGFEK excluding the portion describing as ABCD.

2. Adjoining the property marked in ABCD, there were also another portion of the property where there were some construction which the plaintiff claimed was put up at his instance and was authorized by the plaintiff to defendants No. 1 and 2 to grant a lease to defendants No. 3 and 4. Defendants No. 2 and 3 surrendered back possession of the portion marked AUVW that was situated immediately on the west of the portion marked ABCD. The suit was filed against all of them on a plea that the property which is covered under the document of purchase dated 6.4.1998 must be surrendered back to the plaintiff.

3. Defendants No. 3 and 4 took a defence that they had taken the lease only from defendants No. 1 and 2 and surrendered back possession to them and they have no concern with the plaintiff. The 1st defendant and the 2nd defendant took the principal contest and stated that the sale deed dated 6.4.1998 was not true; it was fabricated. The plaintiff examined the scribe and one of the witnesses. The scribe, apart from the fact that he stated that he prepared the sale deed, he did not recall the consideration paid. Yet another witness who was examined stated that the document had already been written at the time when he scribed his signatures. Considering the defence that it was a fabricated document, the court examined the document

that contained the registration endorsement containing the 2nd defendant's signatures as well as the photograph affixed before the Registrar at the time of causing registration endorsement. The court observed that a plea of fabrication was inconceivable in a situation when the 2nd defendant's photograph had been affixed and the registration endorsement had been made with reference to such a photograph. The genuineness of the document was, therefore, found to be vouched by appropriate evidence which was available and rejected the plea that the document of sale was not true. This reasoning was approved by the appellate court as well.

4. The learned counsel appearing for the defendants would argue that the sale consideration had not been proved, the existence of a superstructure in the portion AUVW was itself proof of the fact that the building which was a part of a single unit, described as ABCD, could not have been segregated in the manner sought to be done in the sale deed in favour of the plaintiff must be found to be fraudulent. His contention is that the most crucial issue of payment of consideration had not been established, for, the scribe did not support case of the plaintiff as far as the payment of consideration was concerned and the plaintiff's witnesses in the sale deed also did not support the case of genuineness.

5. A case relating to a registered document of sale would require a consideration only to the extent of whether there was a valid execution. The proof of validity of the execution of the sale deed obtains the examination of whether the registration formalities had been duly followed and the executant could be said to have known the nature of the document. In this case, he was completely denying the document which was against the face

of the record containing his photograph on which registration endorsement had been made and if execution was found to be otherwise proved with reference to even the scribe's evidence, the mere fact that he did not know whether consideration had passed will assume less significance. A document of sale cannot fail, even if stated consideration had not been paid, for, the right of such a vendor would be to sue for recovery of unpaid money and cannot take a defence of the invalidity of the sale itself. It has been so laid down by the Supreme Court in Kaliaperumal Versus Rajagopal (2009) 4 SCC 193 that the remedy of the vendor would be only to sue for unpaid sale consideration and passing of title will not be fettered. The decree granted by the two courts below have been on proper appreciation of facts relating to the execution of sale in favour of the plaintiff. If the plaintiff's title to the property was proved, the recovery of possession of what the document contained ought to obtain as a matter of necessary corollary.

6. There is no substantial law for consideration in the second appeal. Consequently, the second appeal that challenges the decree for recovery of possession and dismissal of the counter claim for injunction, I make no intervention and dismiss both the appeals as without merit.

November 30, 2015
prem

(K.KANNAN)
JUDGE