

(2004) 02 P&H CK 0079

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 552 of 1984

Balbir Singh and Others

APPELLANT

Vs

Rajinder Singh and Others

RESPONDENT

Date of Decision : 11-02-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 4

Citation : (2004) 137 PLR 489 : (2004) 3 RCR(Civil) 574

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : Gurdial Singh, for the Appellant; M.L. Sarin and Harsh Rekha, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—Plaintiffs are in second appeal aggrieved against the judgment and decree passed by the first appellate Court whereby the suit filed by the plaintiffs was dismissed in appeal.

2. Plaintiff-appellants are the daughters of Inder Singh who was owner of 1/6th share of 93 kanals 5 marlas of land i.e. 15 kanals 11 marlas. The dispute in the present appeal pertains to the estate of deceased-Inder Singh. Plaintiffs claimed possession alleging therein that the defendants have forcibly entered into possession on the basis of sale deed. The sale deed is the result of misrepresentation, fraud and undue influence apart from being without consideration and legal necessity.

3. Defendants contested the suit on the ground that earlier Inder Singh executed the registered will in favour of defendant No. 2 in lieu of services rendered by him. However, subsequent, he executed registered sale deed for consideration of Rs. 13000/- in favour of defendant No. 2. The Court framed issue No. 1 pertaining to execution of the Will and issue No. 2 pertaining to execution of the sale deed. Issue Nos. 1, 2 and 3 are relevant for the decision of the present

appeal read as under:-

"1. Whether deceased Indoor Sing during his life time executed a valid will dated 1.8.1975 in favour of defendant No. 2? POD.

2. Whether deceased Indoor Sing executed a valid sale deed for consideration dated 24.5.1976 of the suit land in favour of defendant No. 2? OPD

3. If issue No. 2 is proved, whether the sale deed is the result of misrepresentation, fraud and undue influence? OPP.

4. Since Inder Singh had executed the sale deed on 24.5.1976 in respect of his entire estate, therefore, issue of Will does not arise for consideration. If the sale deed is held to be illegal, null and void only then the question of Will arises for consideration.

5. To prove the execution of the sale deed, it has been found by the first appellate Court that Indoor Sing survived two years after the execution of the sale deed and he did not raise a little finger during his life time despite the sale deed executed by him. On the basis of the testimony of the attesting witness and scribe DW2 Fiji Chummier, it was found that the sale deed Exhibit D2 has been executed by Inder Singh.

6. Learned counsel for the appellants has argued that there is no evidence of passing of the consideration at the time of execution of the sale deed or prior thereto. Therefore, the sale is without consideration and, thus, no valid title can be said to have been passed in favour of the vendee. The said deed is proved to be containing an endorsement of the Sub Registrar that a sum of Rs. 4000/- has been paid before him. The sale deed also contains a stipulation that the total sale consolidation is Rs. 13,000/- which has been received.

7. It has been so found by the Courts below that the land sold by Inder Singh was his self-acquired property. The fact that the land was self-acquired property cannot be disputed by the learned counsel for the appellants. Once the sale is for consideration, irrespective of its adequacy or inadequacy, it is not open to the plaintiff to dispute the inadequacy of the consideration, if any. It has been found that the appellants have not given any details of fraud in terms of Order 6 Rule 4 of the CPC wherein parties relying on misrepresentation, fraud, breach of trust, willful default or undue influence ought to plead with details thereof. The deceased died in 1978 i.e., after two years of the execution of the sale deed. The sale was not disputed during all this period. In Vidhyadhar Vs. Manikrao and Another, the Hon"ble Supreme Court has held that once the document is executed and registered, the sale is complete. Para 35 of the said judgment reads as under:-

"The definition indicates that in order to constitute a sale, there must be a transfer of ownership from one person to another i.e., transfer of all rights and interests in the properties which are possessed by that person are transferred by him to another person. The transferor cannot retain any part of his interest or

right in that property or else it would not be a sale. The definition further says that the transfer of ownership has to be for a "price paid or promised or part-paid and part-promised." Price thus constitutes an essential ingredient of the transaction of sale. The words "price paid or promised or part-paid and part-promised" indicate that actual payment of whole of the price at the time of the execution of sale deed is not a sine qua non to the completion of the sale. Even if the whole of the price is not paid but the document is executed and thereafter registered, if the property is of the value of more than Rs. 100/-, the sale would be complete."

8. It has been found by the first appellate Court that the execution of the sale deed, Ex.D2 is duly proved. Its execution has been proved by the defendants by testimony of scribe and the attesting witness. Such is finding of fact based upon the appreciation of evidence.

9. In view thereof, I do not that any substantial question of law arises for consideration.

No merits. Dismissed.