
(2018) 11 P&H CK 0049

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No269 of 2010 (O&M)

Kali Ram

APPELLANT

Vs

Ram Kumar And Ors

RESPONDENT

Date of Decision : 02-11-2018

Acts Referred:

Transfer of Property Act, 1882 — Section 55(4)(b)

Citation : (2019) 1 CivCC 613

Hon'ble Judges : Anil Kshetarpal, J

Bench : Single Bench

Advocate : Rajinder Goyal, Jyoti Prasad Sharma

Final Decision : Allowed

Judgement

Anil Kshetarpal, J.

Defendant No.1-appellant is in the Regular Second Appeal against the judgments passed by both the Courts below.

The question which needs consideration is whether a registered sale deed executed by the mother in favour of his son with whom she was residing,

can be set aside simply on the basis of the certain contradictions with regard to time and manner of payment of the sale consideration?

Undisputed facts are that late Smt. Phulma, widow of late Sh. Shambu, was owner of the property in dispute. She initially sold through a registered

sale deed some part of the property i.e. 1 kanals to Raj Pal vide registered sale deed dated 08.02.1996. Thereafter, she transferred through registered

sale deed remaining land measuring 4 kanals 14 marlas in favour of his son Kali Ram, the appellant, vide registered sale deed dated 31.03.1999. After

a period of more than a year and half, Smt. Phulma is alleged to have filed a suit challenging the sale deed on the ground that it is result of fraud,

however, she could not appear in evidence as she died.

Both the Courts after examining the evidence have concurrently found that the plaintiff or her LRs have failed to prove the fraud, however, both the

Courts have taken a view that since the payment of the sale consideration is not proved, therefore, the sale deed is void and hence, set aside. Learned

trial Court has put onus on the appellant to prove the payment of the sale consideration. In the sale deed, it has been mentioned that the amount has

already been received by the Vendor. It may be noted here that the sale deed bears not only the photograph of the seller but also of the purchaser.

The thumb impressions of the Executant-Vendor-Late Smt. Phulma are not disputed.

On reading oral evidence of Ram Kumar who is another brother of the defendant-appellant, it is apparent that Smt. Phulma, their mother used to

reside with Kali Ram, the appellant herein. It has also come in evidence that their father had taken a loan and the defendant-appellant had deposited

` 22,500/- in order to repay that loan.

Learned Courts have drawn, assumption against the appellant on the ground that in the sale deed, it is mentioned that the entire sale consideration has

already been paid. However, when the defendant-appellant appeared, he stated that he had deposited ` 22,500/- in the bank to square off the loan and

the remaining amount was paid to the mother subsequent to the execution of the sale deed.

As per Section 55(4)(b) of the Transfer of Property Act, if it has been written in the sale deed that the title has passed on the execution of the sale

deed, the non-payment of the sale consideration would at the most be recoverable and would remain charge on the property sold/transferred.

In view thereof, learned trial Court as well as First Appellate Court committed an error in recording that the sale deed without consideration is void.

Further, the sale consideration can be paid in past, present or future. Here was a case where the transaction was between the mother and son. The

plaintiff has not produced any evidence to prove that ` 22,500/- had not been deposited by the defendant-appellant. It is also undisputed that the mother

was residing with defendant-appellant. In such circumstances, once both the Courts had concurrently found that the plaintiff has failed to establish the

plea of fraud, the Courts committed an error in declaring the sale deed to be void

only on the basis of contradiction in the manner and time of payment of the sale consideration.

In view of the aforesaid, question of law as framed earlier is answered in favour of the appellant. Judgments and decrees passed by both the Courts below are set aside.

Regular Second Appeal is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.