

**IN THE COURT OF BASRUDDIN
ADDITIONAL DISTRICT JUDGE,
KARNAL (UID No. HR0133)**

Civil Appeal No. RBT/75 of 2017
C.I.S. No. CA/707/2014
CNR No. HRKR01-006212-2014
Date of Institution : 26.11.2014/12.05.2017
Date of Decision : October 9, 2017

Balbir Singh son of Sh. Chamela son of Sh.Surta, now deceased through his LRs (as per Will No.96 dated 21.07.2015) :-

1. Pardeep Kumar son of Raghbir Singh son of Chamel Singh,
 2. Deepak Kumar son of Randhir Singh son of Chamel Singh,
- both residents of village Garhi Sadhan, Tehsil Indri, District Karnal.

..... Appellant/Plaintiff.

Versus

1. Sandeep Chahal son of Sh.Suresh Kumar son of Sh.Nasib Singh, resident of village Bibipur Jattan, Tehsil Indri District Karnal.
2. Tehsildar/Sub Registrar, Indri, District Karnal.
3. State of Haryana through Collector, Karnal.

..... Respondents/Defendants.

<i>APPEAL AGAINST JUDGMENT AND DECREE DATED 18.10.2014, PASSED BY SH.VINEET SAPRA, THE THEN LEARNED CIVIL JUDGE (JUNIOR DIVISION), KARNAL.</i>
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ARGUED BY

*Shri B.S.Kashyap, counsel for appellant/plaintiff.
Shri S.C.Mohan, counsel for respondent No.1.
Shri Subhash Chand, Govt.Pleader for respondents No.2 &3.*

JUDGMENT

Appellant/plaintiff (*hereinafter referred to as
'plaintiff'*) has filed the present appeal against judgment and decree dated

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18.10.2014, passed by the Court of Shri Vineet Sapra, the then learned Civil Judge (Junior Division), Karnal; whereby suit, filed by plaintiff against respondents/defendants (*hereinafter called as 'defendants'*) for declaration with consequential relief of permanent injunction was dismissed with no order as to costs.

2. Brief facts of the case of plaintiff have been to the effect that plaintiff was owner in possession of agriculture land measuring 17 K-12 M, out of the total land measuring 88 K-10M comprised in Khewat No. 60, Khatoni No. 76, Khasra No. 53, killas No. 14(8-0), 15 (8-0), 16 (8-0), 17 (8-0), 24 (4-14), Rect. No. 54, Khasra No. 3/2 (2-8), 4/1 (3-13), 7 (5-7), 8/1 (4-16), 9/1 (1-1), 11 (8-0), 12 (8-0), 13/2 (0-16), 13/3 (2-18), 14 (0-18), 18 (2-10), 19 (6-1), 20 (5-18), total kittas 19, share of the 352/1770 share as per jamabandi for the year 2004-05 (here-in-after referred to as suit land). The above said land 17 K-12M was allegedly sold away by plaintiff in the name of defendant No. 1 by way of alleged sale deed for the consideration of ₹17,60,000/- at the rate of ₹8,00,000/- per acre, but at the time of execution of the sale deed, the sale deed was typed by the Document Writer and the plaintiff made a demand of ₹17,60,000/- from the defendant No.1, then the defendant No. 1 had told to the plaintiff that he will pay to him ₹8,30,000/- in cash and the balance amount will be paid to him through the cheque as under:-

i) ₹1.50 lacs vide cheque No. 313796 of ICICI Bank,

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ii) Another cheque of ₹7,80,000/- of HDFC Bank, Karnal vide cheque No. 571731, 571732, 571733 and further cheque details were cut down on the sale deed without consent of plaintiff. This all has been done at the instance of defendant No. 1. After the alleged execution of the sale deed, the plaintiff demanded the whole consideration amount from the defendant No. 1, but the defendant No. 1 said to the plaintiff that the amount will be paid before the Sub Registrar, Indri, after completing all the formalities at the time of registration of sale deed. It is worth to mention here that there were many of other respectable persons including the Numbardar of the village including the other witnesses mentioned in the alleged sale deed. No agreement to sell was ever executed between the parties, nor any amount was paid to the plaintiff at any time before the alleged sale deed. On the assurance given by the defendant No. 1 to the plaintiff in the presence of alleged sale deed witnesses and other respectable persons present there, the alleged sale deed was got registered in favour of the defendant No. 1 without any consideration. When the plaintiff demanded the consideration amount of ₹17,60,000/- from the defendant No. 1, then the defendant No. 1 said to the plaintiff in the presence of witnesses and other respectable persons and Numbardar that he will pay it after going /reaching to his house of the plaintiff, but the defendant No. 1 has been postponing the matter on one pretext or the other.

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It has been further pleaded that the plaintiff convened a Panchayat and the defendant No. 1 was called in the Panchayat and he had admitted the aforesaid facts and the persons who took part in the Panchayat were also told in this regard by the other witnesses who admitted this fact and the plaintiff paid ₹ 4,60,000/- in the month of June, 2007 only and for further amount and cheques the plaintiff demanded time of 15 days. The Panchayat directed the plaintiff that the possession of the land be not given to the defendant No. 1 by the plaintiff till such time the defendant No. 1 pays the whole amount to the plaintiff. Moreover, the defendant No. 1 will not get the mutation entered and sanctioned in his name regarding the said land. It was further told to the defendant No. 1 in the Panchayat that if the defendant No. 1 fails to pay the amount to the plaintiff within the stipulated period, then he will get the sale deed canceled from the office of Sub Registrar, Indri. The defendant No. 1 further demanded the account No. of the plaintiff so that the defendant No. 1 may be able to deposit the amount in his bank A/C. So the plaintiff had given his A/C No. 14263 of Central Bank, Garhi Sadhan, Tehsil Indri, District Karnal.

It has been further pleaded that thereafter, after a period of 15 days, when the plaintiff demanded the amount from the defendant No. 1, then the defendant No. 1 postponed the matter by saying that a close relative of the defendant No. 1 has expired in a road accident

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and he will pay the remaining amount to the plaintiff after a month or so. The plaintiff went on postponing the matter on one pretext or the other and has not made the payment of the balance amount to the plaintiff so far. After sometime, the plaintiff again convened a Panchayat in which the defendant No. 1 said the plaintiff in presence of respectable persons of the village that he will make the payment of the balance amount to the plaintiff after selling the wheat crop in April/May, 2008 with interest, but the defendant No. 1 failed to make the payment of the said amount with the interest to the plaintiff so far. He further said that he will pay ₹ 6,50,000/- to one Bir Singh son of Chhaju Ram, who is a relative of the plaintiff and further said that he will pay ₹ 6,50,000/- with interest to the plaintiff, but the defendant No. 1 has not paid the remaining amount to the plaintiff with interest so far. The plaintiff gave an application to the S.H.O, Police Station, Indri in this regard. Moreover, the defendant No. 1 has not paid ₹ 6,50,000/- to the said Bir Singh above said so far. So, the balance amount of ₹ 13,00,000/- excluding interest is due towards the defendant No. 1, which the defendant No. 1 has not paid to the plaintiff, so far inspite of repeated requests/demands while it is a settled law that without consideration, every document i.e. sale deed is illegal, null and void and against the Contract Act which is liable to be set aside. It has been further pleaded that the mutation No. 1030 sanctioned on 16.07.2007, it also null and void. The defendant No. 1 threatened the

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plaintiff that he would sell the suit property to some other person. The plaintiff requested the defendant No. 1 many times for paying the remaining amount of the plaintiff or to get the alleged sale deed cancelled, but of no avail. Hence, the cause of action arose and the suit was filed by the plaintiff seeking a decree of declaration with consequential relief of permanent injunction.

3. On notice, defendants caused their respective appearance and contested the suit by filing separate written statements. Defendant No.1 filed separate written statement taking preliminary objections with regard to the maintainability of suit; locus standi and cause of action etc. On merits, it was submitted that defendant No. 1 is the bonafide purchasers of suit land. The plaintiff with his free will and consent sold the land in question i.e. land measuring 17 K-12 M in favour of defendant No. 1 for valuable consideration of ₹ 17,60,000/- vide sale deed No. 518/1 dated 12.06.2007 which was duly scribed by Shri Mai Chand, Deed Writer, Tehsil Campus, Indri and same was duly read over to the plaintiff. The plaintiff after admitting the contents of said sale deed as correct had signed the same in the presence of witnesses. The witness also thumb marked the said sale deed and Shri Naresh Chahal appeared on the said sale deed on behalf of Sandeep Chahal. After scribing of the sale deed, the plaintiff appeared before the joint Sub Registrar and joint Sub-Registrar read over the contents of the sale deed to the plaintiff and the

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sale deed was presented before the Sub-Registrar, Indri by plaintiff himself and he himself appeared before the joint Sub-Registrar and his officials where his photographs were taken on the computer and are in existence on the back side of the said sale deed. It is also worth while to mention here that the cuttings in the sale deed have been bearing the thumb impression of the plaintiff and an endorsement has also been given in the bottom of the sale deed itself and as such the sale deed in question is quite legal and valid one. No amount is outstanding against the defendant No. 1 as alleged and hence there arises no question at all of paying any money to him. No panchayat was ever convened. The defendant No. 1 is the owner in possession of the suit property and he has every right or authority to deal with the suit property in any manner, he likes. Rest of averments were also denied and request for dismissal of suit with cost was made.

Defendants No.2 & 3 filed their joint written statement taking almost similar preliminary objections. While replying on merits, it has been pleaded that the mutation in question has been rightly and legally entered and sanctioned as per law and same is legal and valid. The plaintiff never contracted the answering defendants No. 2 & 3. Denying other averments, dismissal of the suit was prayed on behalf of defendants No.2 & 3.

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4. From pleadings of parties, following issues were framed by learned trial Court :

- 1. Whether the sale deed No.518/1 dated 12.06.2007 registered by defendant No.2 and mutation No.1030 dated 16.07.2007 on the basis of registered sale deed in favour of defendant No.1 and other revenue entries, if any are illegal, null and void, abinitio, not binding on the rights of plaintiff and are liable to be set aside, as prayed for? OPP*
- 2. Whether the suit is not maintainable ? OPD*
- 3. Whether the suit has been properly valued for the purposes of Court fee and jurisdiction?OPD*
- 4. Whether the Civil Court has no jurisdiction to try and entertain the present suit? OPD*
- 5. Whether the suit has not been filed in accordance with the amended provisions of CPC?OPD*
- 6. Relief.*

5. The parties led evidence in support of their respective claims before learned trial Court.

6. After hearing both sides, learned trial Court vide impugned judgment and decree dated 18.10.2014 dismissed the suit of plaintiff.

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7. Feeling aggrieved with aforesaid judgment and decree dated 18.10.2014, passed by learned trial Court, present appeal has been preferred by plaintiff.

8. I have heard learned counsel for parties and have gone through entire record of case with their able assistance.

9. It was argued by counsel for plaintiff that learned Trial Court ignored the evidence adduced by plaintiff regarding fraud committed by defendant No.1 with plaintiff regarding fact that not even a single penny was paid by defendant No.1 to the plaintiff. He submitted that defendants had relied upon statement Ex.PW6/B, but there is no mention of the cheque number in this statement of account. Similarly, statement of the bank official examined by defendant No.1 is also insufficient for establishing that plaintiff received cheque No.313796 and encashed the same. From the evidence of plaintiff it is duly established that Ex.P1 was not mental and conscious act of plaintiff, but same was procured by fraud by defendant No.1. This was the actual reason due to which cheque in question was not presented before the Court.

It was further argued by counsel for plaintiff that in a suit filed for declaration and permanent injunction, without delivery of possession, mutation cannot be incorporated and sanctioned as is in the present case. In support of his contention he has referred case law titled ***Narinder Nath Kapoor Vs. Prem Nath Khanna and others 2009(4) RCR***

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(Civil)515 (P&H) and Shri Ranbir Singh and Shri Ramesh Chand Vs. Shri Jodha Ram and Shri Ranjit Singh 1994 PLJ 20(Financial Commissioner Himachal Pradesh).

He further submitted that even registered sale deed cannot be taken into account by the Court if same has been obtained by fraud, misrepresentation and without payment of sale consideration. In support of his contention he has referred case law titled ***Dayawantibai Vs. Smt.Sarula Bai and others 2007(5) RCR (Civil) 111 (MP).***

He further submitted that on certain facts defendants did not make pleadings, so evidence cannot be adduced by them and the same cannot be read by the Court. In support of his contention, he has referred case law titled ***Parveen Kumar and others Vs. State of Haryana and another 1991 PLJ 95 (P&H).*** It was the contention of counsel for plaintiff that defendants in their written statements did not mention the transaction as argued by their counsel regarding money paid in cash and who gave four cheques described in Ex.DX. He further submitted that admission is the best evidence and defendant has admitted the case of plaintiff. In support of his contention, he has relied upon ***Devarapalli Malla Reddy (died) and Ors. Vs. Gadiyam Hanumayamma & Ors. 2012(2) Civil Court Cases 045 (AP).***

He further submitted that in the present case if stay in favour of plaintiff is not confirmed then multiplicity of suits would come

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into existence. In support of his contention he has relied upon ***Sushil Kumar Vs. Smt.Bimla Devi & Ors. 2014(3) CCC 234 (P&H)*** and ***Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass 2005(1) Civil Court Cases 430 (SC).***

He further submitted that defendant No.1 has suppressed the material facts from the Court, so pleas taken by defendant No.1 should be ignored. In support of his contention, he has relied upon ***Meghmala & Ors. Vs. G.Narasimha Reddy & Ors. 2011(3) CCC 006 (Supreme Court).*** Lastly, he requested for setting aside the findings recorded by learned Trial Court and accepting the present appeal.

10. On the other hand, it was vehemently argued by counsel for the defendant No.1 that he is the bonafide purchaser of the suit land and he has paid full consideration to the plaintiff. He further argued that after paying full sale consideration Naresh Chahal appeared on behalf of him and got executed the sale deed in favour of defendant No.1. He further submitted that no amount is outstanding against defendants and the present suit has been filed by the plaintiff only to grab money. Lastly, learned counsel for the defendants requested for confirming the findings recorded by learned Trial Court since suit filed by the plaintiff is devoid of any merits.

11. I do agree with the contentions of the counsel for plaintiff that admission is the best evidence. Plaintiff has claimed that

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registered sale deed (Ex.D1) was obtained by defendant No.1 from plaintiff without making payment of the advance consideration. He has denied his thumb impression over Ex.D1 and he further denied his thumb impression over line No.13, 14, 15, 16 of page No.2 of the sale deed, which have been crossed by Typewriter, at place Mark Q and QC of registered sale deed Ex.D1. In pleading he has totally denied that he executed any sale deed in favour of defendant No.1. First, I would like to refer here the testimony of plaintiff when he stepped into the witness box as PW4. Naturally, in his affidavit, he has reiterated the averments of his pleadings. However, in cross-examination he could not withstand by his case and in first line of his cross-examination he stated that “it is incorrect that after selling this land he appeared before Tehsildar. It is correct that registered sale deed of 17 Kanal 12 Marla was made/done in favour of defendant Sandeep.” Though this witness made his best efforts to withheld the reality yet from his mouth at number of occasions during his cross-examination, it was quite clearly conceded that he voluntarily and out of his free volition executed sale deed Ex.D1 after receipt of sale consideration of ₹17,60,000/-. This witness further stated “he has seen registry No.518/1 dated 12.06.2007 and identified his photograph over same, which is at place Mark-A and original of this sale deed is Ex.D1. I do not remember from which scribe I got written this sale deed. I do not know the name of the scribe who prepared the same. I did not get

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prepared Ex.D1. This was not written on his instructions. Ex.D1 does not bear his thumb impression or signatures. Self stated there is no thumb impression of deponent at page No.2 at cutting portion. Remaining thumb impression belongs to him. It is correct that remaining other thumb impressions except four lines on second page were affixed by him by his free volition.” This witness further stated that over sale deed there is his photograph which was taken by computer and given by him voluntarily. He further stated “it is correct he affixed his thumb impression over third page.” This witness further stated that “his agreement with defendant took place 5-7 days prior to execution of sale deed. In the field there was crop of sugarcane at the time of registration of the sale deed.” This witness further stated that “it is correct that at the time of execution of registered deed Ex.D1, when same was registered, his photographs were prepared at the same time alongwith witnesses.” All above discussed quite succinct admission of plaintiff leads to the irresistible conclusion that plaintiff after obtaining sale consideration of ₹17,60,000/- got executed sale deed (Ex.D1) in favour of defendant No.1.

12. Even for the sake of arguments, it is considered that testimony/admission of plaintiff (PW4) was insufficient for proving the dispute between the parties regarding genuineness of Ex.D1, even then from the evidence of defendant No.1, sale deed Ex.D1 has been duly proved. Defendant No.1 besides himself examined number of material

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witnesses for establishing the execution of Ex.D1. Naresh Kumar was the attesting witness of Ex.D1, who stepped into the witness box as DW2. He clarified the strategy under which sale deed Ex.D1 was executed and registered. He has merely stated that in his presence amount was not paid. This fact was true because some payment was made in cash while the remaining payment was made by defendant through four cheques. Defendants further examined DW3 Mai Chand Draftsman, Tehsil Office Indri, who brought his register for proving registry No.518/1 dated 12.06.2007, which was typed by him on the instructions of Balbir Singh, which was executed in favour of Sandeep Chahal and the same was explained to parties and it was signed/thumb impression affixed thereupon by the parties and attesting witnesses. DW4 Mukesh Kumar Registry Clerk brought the original record of sale deed No.518/1 dated 12.06.2007. On the side of plaintiff not even a single witness of sale deed was brought into the witness box, without any explanation.

13. With regard to payment of ₹1,50,000/- vide cheque No.313796 defendant No.1 examined number of witnesses. Defendant examined DW5 for establishing the fact that account No.01958040000 was in the name of Sandeep Chahal (defendant). He has proved copy of same as Ex.DW5/A and cheque No.571731 for ₹3,00,000/- as Ex.DW5/B, cheque No.571732 for ₹1,80,000/- as Ex.DW5/C and cheque No.571733 for ₹3,00,000/- as Ex.DW5/D. With regard to account

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No.14263 admittedly existing in name of Balbir Singh, defendant No.1 examined Bhagat Singh Jocker, Senior Manager, Central Bank of India, Indri as DW6. He proved the statement of account of Balbir Singh as Ex.DW6/B. Defendant No.1 further examined Rakesh Kumar, Assistant Manager, ICICI Bank, Sector-12, Karnal as DW7. He proved that account No.017301508918 was in the name of Sandeep Chahal. He also proved copy the RAPAT copy of cheque No.313796 as Ex.DW7/A, attested copy of said cheque as Ex.DW7/B and statement of account as Ex.DW7/C. Regarding specimen thumb impression and disputed thumb impression existed over sale deed Ex.D1 Expert Mr.Sunil Kumar (DW8) was examined by taking disputed thumb impression of plaintiff as QA, QB, QC at page No.2 of sale deed, while his specimen signatures S4, S2 were taken from page No.1 and 3 of the same document and from other admitted documents. As per opinion of the Handwriting and Finger Print Expert thumb impressions at middle portion i.e. page No.2 of Ex.D1 were of plaintiff.

14. During course of arguments counsel for plaintiff submitted that it is not proved by defendant that cheque No.313796 was encashed by plaintiff. From Ex.D3 it is evident that in favour of Balbir Singh a cheque was issued by defendant from ICICI bank of ₹1,50,000/-. Serial number of the same is 313796 as mentioned in the middle column of above document. Moreover, same is clarified from Ex.DW6/B and

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certificate issued from ICICI Bank Ex.DW7/B, wherein it is clearly mentioned that cheque No.313796 dated 12.06.2007 amounting to ₹1,50,000/- was debited through clearing at ICICI Bank at Karnal on 16.06.2007 and credited amount of ₹1,49,466/- in Central Bank of India, Indri Branch in account No.14263 in the name of Balbir Singh. Thus, not only admission of plaintiff, but from the evidence adduced by defendant No.1 oral as well as documentary, it is duly proved that sale deed Ex.D1 was mental and conscious act of the plaintiff. Nothing has been concealed by defendants. Case of defendants is not beyond pleadings what was argued by counsel for the plaintiff and plaintiff could not make out his ground upto any extent regarding plea of fraud, misrepresentation etc. So, authorities *Narinder Nath Kapoor Vs. Prem Nath Khanna and others (supra)*; *Shri Ranbir Singh and Shri Ramesh Chand Vs. Shri Jodha Ram and Shri Ranjit Singh (supra)*; *Dayawantibai Vs. Smt.Sarula Bai and others (supra)*; *Parveen Kumar and others Vs. State of Haryana and another (supra)*; *Devarapalli Malla Reddy (died) and Ors. Vs. Gadiyam Hanumayamma & Ors. (supra)*; *Sushil Kumar Vs. Smt.Bimla Devi & Ors. (supra)*; *Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass*; and *Meghmala & Ors. Vs. G.Narasimha Reddy & Ors. (supra)* referred by counsel for the plaintiff are not helpful to prove his stand.

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15. From above discussed evidence it is proved that not only the cash amount was received by plaintiff at his house in the tune of ₹8,30,000/- but vide four cheques No.313796, 571731, 571732 and 571733 plaintiff received from defendant No.1 total sale consideration of ₹17,60,000/-. Consequently, issue No.1 is decided in favour of defendant No.1 and against the plaintiff. Further, as per my findings on issue No.1, remaining issues No.2 to 5 are also decided in favour of defendant No.1 and against the plaintiff.

16. No other point was argued by either side.

17. As per my findings on issues No.1 to 5 discussed above, the present appeal filed by appellant-plaintiff is hereby **dismissed with costs**. Decree-sheet be prepared accordingly. Trial Court record along with a copy of this judgment be sent back. Appeal file be consigned to record room after due compliance.

**Pronounced in Open Court on this
9th day of October, 2017.**

**(Basruddin)
Addl. District Judge
Karnal. (UID No. HR0133)**

This judgment contains 17 pages and all pages have been
checked and signed by me.

**(Basruddin)
Addl. District Judge,
Karnal. 09.10.2017.**

Typed by: Dalbir Singh,
Stenographer Gr.II.