

**RSA No. 4592 of 1999**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 4592 of 1999 (O&M)**Reserved on: 21.05.2025****Pronounced on: 23.05.2025****Nasru****...Appellant**

Versus

Mohammad Sardar & Anr.

...Respondents**CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**Argued by:-Mr. Sumit Jain, Advocate
for the appellant.Mr. Karan Bhardwaj and
Ms. Ishaan, Advocate
For respondents.

DEEPAK GUPTA, J.

The Plaintiff of the case is before this Court in the present regular second appeal against the concurrent findings of the Courts below, in as much as, suit for declaration with consequential relief of permanent injunction filed by him regarding the property in dispute was dismissed by the trial Court on 16.10.1998, and the appeal filed by him has been dismissed by the first appellate court of learned District Judge, Gurgaon on 02.06.1999.

2. Admittedly, plaintiff was owner of suit land - 07 *kanal* 10 *marlas* of land situated in revenue estate of village Santhwari, Tehsil Ferozpur Jhirka, District Gurgaon as per jamabandi for the year 1989-90. According to plaintiff, he had agreed to mortgage the said land to defendant No.2 for consideration of ₹30,000/-. He went to the house of defendant No.1 i.e. husband of defendant No.2 and was brought to Ferozpur Jhirka, but instead of getting the mortgage deed executed from him, defendant got the sale-deed of the suit land executed in collusion with scribe etc. It was alleged by the plaintiff that his thumb impression on the

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sale deed were obtained by misrepresenting it to be mortgage deed. It was thus, contended that sale deed was obtained by the defendants as a result of fraud and misrepresentation practiced upon him. It was also the case of the plaintiff that sale price of the suit land is ₹1,00,000/-, whereas in the impugned sale deed, it is incorporated as ₹30,000/-, which is a meager amount comparing to market value. With these submissions, he prayed for necessary declaration and permanent injunction.

3. Defendants No.1 and 2 contested the suit and contended that plaintiff had executed the sale deed dated 06.07.1990 regarding the suit property for a consideration of ₹30,000/-, which was fixed in good faith and actually paid as per the market value. The allegations of fraud etc. made by the plaintiff were denied. They prayed for dismissal of the suit.

4. Necessary issues were framed. Evidence produced by the parties was taken on record. Trial Court dismissed the suit on 16.10.1998 by holding that plaintiff had sold the suit property by virtue of the sale deed dated 06.07.1990 and that he had failed to prove the allegation of fraud to the effect that in the garb of mortgage deed, sale deed was got executed from him. All the findings as returned by the trial Court have been affirmed by the Appellate Court on 02.06.1999.

5. Assailing the aforesaid concurrent findings, it is contended by learned counsel for the appellant-plaintiff that allegations of fraud and misrepresentation can be proved only by circumstantial evidence and that there cannot be any direct evidence in this regard. It is further the contention of learned counsel that just a few days prior to the execution of the alleged sale deed dated 06.07.1990, plaintiff had agreed to sell the suit land to the defendant for consideration of ₹73,000/- and therefore, it is absolutely not believable that only after a few days, he would agree to sell the same for ₹30,000/-. The contention is that in fact, the agreement to sell executed prior to impugned deed, was cancelled and thereafter, the plaintiff had agreed to mortgage the suit land for ₹30,000/- but in the garb

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of mortgage deed, defendants procured the sale deed from him by practicing fraud and misrepresentation.

6. On the other hand, counsel for the respondents-defendants has argued that there is no scope for interference in the concurrent findings of facts as recorded by the Courts below, as it has been found that sale deed dated 06.07.1990 has been duly proved not only by way of testimony of document writer but also by the testimony of one of the attesting witnesses, whose credibility could not be impeached in any manner. Learned counsel has also referred to the observations of Courts below revealing that at the relevant time, the market value of the suit land was same, as is incorporated in the sale deed. With these submissions, he prayed for dismissal of the appeal.

7. This Court has considered the submissions of both the sides and have appraised the record.

8. It is undisputed that plaintiff was owner of the suit property prior to the execution of document dated 06.07.1990 Ex.D1, which according to him was executed by him as a mortgage deed but was got executed as a sale deed by way of fraud and misrepresentation. Plaintiff does not dispute his thumb impression on the said document.

9. As rightly observed by the Courts below that it is well-settled that allegations of fraud must be substantiated with clear and cogent evidence, akin to the standard required for proving a criminal charge, regardless of whether the proceedings are civil or criminal. Mere allegations of fraud, without credible proof, are insufficient to establish such a claim. The burden lies on the party alleging fraud to prove it beyond reasonable doubt. It is by keeping in mind the said legal position that it is to be seen as to whether plaintiff has been able to make out a case of fraud in execution of the sale deed dated 06.07.1990 (Ex.D1), which according to him, he had executed as a mortgage deed.

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10. DW1 Sh. S.D. Chaudhary had drafted the sale deed Ex.D1 and as per his testimony, it was so drafted by him at the instance of the parties and thereafter, the contents of the same were read over by him to them and they had admitted the correctness thereof and had put their attestation. DW2 Imrat is one of the attesting witnesses to the sale deed Ex.D1 and he also proved that when the sale-deed was presented before the Tehsildar, plaintiff Nasru had admitted the payment of ₹8000/-. He also deposed about the due execution of the sale deed by the plaintiff in favour of the defendant. As has been found by learned Appellate Court, the credibility of none of these witnesses could be impeached. Both of them are independent witnesses and did not have any animosity towards plaintiff or any other party to depose lie. The evidence clearly reveals that sale deed was also presented before Sub Registrar, where also the plaintiff had put his thumb impression thereon after admitting the contents thereof.

11. The contention of the plaintiff to the effect that market value of the suit land was much more and not ₹30,000/- as shown in the sale deed Ex.D1, has been found to be incorrect by the Courts. The Appellate Court has referred to the copies of sale deeds Ex.D2 to Ex.D4 besides mutation Ex.D5 to D7 indicating that the value of the similar land in the area was ₹30,000/-.

12. The contention of Ld. counsel for the appellant that a few days prior to the execution of the sale deed, plaintiff had agreed to sell the suit land to the defendant for consideration of ₹73,000/- and so, it is not believable that he will later on sell it for ₹30,000/-, has no merit, considering the fact that no such agreement to sell is pleaded or proved in evidence. Although, learned counsel stated that copy thereof as mark A was produced but this cannot be taken into consideration, having regard to the fact that it was beyond pleadings. Had it been the case of the plaintiff that he had earlier agreed to sell the suit land for ₹73,000/- and that very agreement was cancelled and later on, he had executed the mortgage deed, he would have so mentioned the same in his pleadings. However, as

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noticed above, there is no such pleading on the part of the plaintiff. As such, the contention raised by counsel for the appellant-plaintiff being beyond pleadings, cannot be taken into consideration.

13. The findings recorded by the Courts below are concurrent findings of fact, arrived at through proper appreciation of the evidence on record. This Court finds no reason to interfere with those findings, particularly in the absence of any illegality, perversity, or manifest error warranting such interference. As such, holding the present appeal to be devoid of any merits, the same is hereby dismissed.

23.05.2025*Jiten***(DEEPAK GUPTA)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No