

2025:PHHC:047982



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

**RSA-2776-2022 (O&M)
Reserved on : 18.03.2025
Pronounced on : 08.04.2025**

Tek Ram (since deceased) through his LRAppellant

VERSUS

Smt. Phoolpati Devi & OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Kumar Goyal, Advocate for the appellant.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 19.03.2016 passed by the Trial Court and the judgment and decree dated 21.05.2022 passed by the First Appellate Court whereby his suit for declaration with consequential relief of permanent injunction has been dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant filed the suit averring that he and his brother (defendant-respondent No.4) are owners of land measuring 50 kanal 5 marla and that the defendant-respondent No.3 was willing to purchase land measuring 4 kanal belonging to the defendant-respondent No.4 and was also interested in taking the land measuring 8 kanals of the plaintiff-appellant on mortgage. As per the plaintiff-appellant he agreed to mortgage his land measuring 8 kanals for Rs.2,25,000/- and, as per his brother (defendant-respondent No.4), the defendant-respondent No.3 also agreed to purchase land measuring 4 kanals

belonging to defendant-respondent No.4 for Rs.12 lakhs. The sale deed was executed and registered on 31.03.2008 in favour of defendant-respondent Nos.1 and 2 on the pretext that there would be some rebate in registration expenses etc. if the documentation was done in the names of ladies. The plaintiff-appellant was always under the impression that he was mortgaging his land measuring 8 kanals and had put his thumb impression on the document considering the same to be a mortgage deed and his brother defendant-respondent No.4 also put his thumb impression on the document by telling the plaintiff-appellant that he has sold his land measuring 4 kanals. The plaintiff-appellant received Rs.2,25,000/- as mortgage money while his brother defendant-respondent No.4 received Rs.12 lakhs as the sale consideration. Subsequently, the plaintiff-appellant learnt that a sale deed had been obtained from him with respect to land measuring 12 kanals. As per the plaintiff-appellant he never wanted to sell his land to defendant-respondent Nos.1 and 2 and the sale deed dated 31.03.2008 was based upon fraud and has no legal sanctity and that the defendant-respondents had defrauded the plaintiff-appellant and the sale deed was not binding upon him. Hence, the suit. The suit was contested by defendant-respondent Nos.1 to 3 who filed a joint written statement raising preliminary objections of maintainability, cause of action, locus standi, mis-joinder and non-joinder of parties, concealment of material facts, etc. On merits it was the stand taken that the defendant-respondent Nos.1 and 2 had purchased the land measuring 12 kanals vide registered sale deed dated 31.03.2008 for a sale consideration of Rs.14,25,000/- from the plaintiff-appellant and his brother the defendant-respondent No.4 and the possession was delivered on the same day. The mutation was also sanctioned in their favour and they were owners in

possession of the land measuring 12 kanals. No replication was filed by the plaintiff-appellant.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to a decree of declaration to the effect that document dated 31.03.2008 (sale deed) and mutation No.3528 dated 07.11.2008 are illegal, void and nonest ? OPP
2. Whether the plaintiff is entitled for a relief of permanent injunction as prayed for ? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
4. Whether the plaintiff has no cause of action to file the present suit ? OPD
5. Whether the plaintiff is estopped by his own act and conduct to file the present suit ? OPD
6. Relief.

4. The Trial Court vide judgment and decree dated 19.03.2016 dismissed the suit holding inter-alia that the plaintiff-appellant had not been able to prove any fraud having been committed at the time of execution of the sale deed dated 31.03.2008. Aggrieved by the decision of the Trial Court, an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 21.05.2022. Hence, the present regular second appeal by the plaintiff-appellant.

5. The learned counsel for the plaintiff-appellant has contended that both the Courts have erred in dismissing the suit of the plaintiff-appellant. It is urged that the plaintiff-appellant never intended to sell his land and had thumb marked the documents in good faith under the impression that he was mortgaging his land measuring 8 kanals. It is contended that a fraud has been played upon the plaintiff-appellant and therefore the suit deserved to be decreed.

6. Heard.

7. In the present case both the Courts have held that the plaintiff-appellant failed to prove any fraud in the execution of the sale deed dated 31.03.2008. It is well settled that fraud has not only to be specifically pleaded but also proved. In the present case the plaintiff-appellant has failed to establish and prove that any fraud had been committed upon him by the defendant-respondents. No doubt fraud vitiates everything inasmuch as it affects the very solemnity of the proceedings, however, it is the settled law that fraud has to be pleaded and established by leading cogent evidence. An ambiguous statement cannot per se make a document fraudulent. In the present case, there is no credible evidence available on the record which would prove the stand of fraud pleaded by the plaintiff-appellant. The thumb impressions of the plaintiff-appellant on the sale deed were never got compared with his admitted thumb impressions and even the witnesses to the sale deed were also not examined. The evidence of any fraud is woefully lacking. Learned counsel for the plaintiff-appellant has failed to point out as to how the concurrent findings recorded by both the Courts are erroneous or perverse. No cogent and reliable evidence has been shown to the Court by the learned counsel which would establish that the plaintiff-appellant did not

ever intend to execute a sale deed but only a mortgage deed. Even his brother defendant-respondent No.4 did not step into the witness box to depose in his favour. This Court finds no reason to differ from the concurrent findings returned by both the Courts.

8. No other point was argued.

9. In view of the discussion above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

08.04.2025

Ankur

**(ALKA SARIN)
JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO