

Surain Singh (Dead) By Lrs. and Others

Vs

Mehenga (Dead) By Lrs.

Civil Appeal No. 2195 of 1977

(K. Ramaswamy, G. B. Pattanaik JJ)

01.02.1996

ORDER

1. This appeal by special leave arises from the judgment of the Punjab & Haryana High Court in RSA No. 878 of 1964 dated 27-9-1976. The appellants/plaintiffs were non-suited by the High Court on the finding that the sale deed was without consideration (Ex. P-1) executed and registered on 29-9-1959. Shri S. K. Gambhir, the learned counsel for the appellants, contended that the question whether consideration has been passed is a pure question of fact. The appellate court having gone into that aspect as a court of fact and having entered a finding, reversal thereof by the High Court is illegal. It is not in dispute that in the suit the respondents contended that the sale deed was obtained by fraud, misrepresentation and without consideration. The trial court dismissed the suit. But on appeal, the appellate court reversed the finding and held that neither fraud nor misrepresentation was made out. Adequate consideration was passed under the sale deed. Therefore, it is a valid sale deed. The High Court after considering the evidence ultimately recorded a finding that there is no proof that the appellants has paid the consideration. In that behalf, the High Court has looked into the accounts maintained by the appellant himself and it is stated thus :

"That no evidence has been led by the respondents/appellants to show that Rs. 2350 were due to them from the appellants/respondents on the basis of Bahi's account and bonds. It has also not been proved by the respondents that the amount of Rs. 1650 was paid by them to the appellants."

On the basis of the said finding, the High Court has reversed the decree of the appellate court and confirmed, though for different reasons, the decree of the trial court. Though normally the High Court might not have interfered with the finding recorded by the appellate court, in view of the diverse views with the finding recorded by the appellate court, in view of the diverse views by the trial court and the appellate court, the High Court was impelled to go into the question and recorded a finding. The material evidence and relevant circumstances were not adverted to be the first appellate court. The High court, therefore, had done that exercise. It being a finding of fact, we do not find it a fit case for out further interference.

2. The appeal is, therefore, dismissed. But in the circumstances, without costs.