

A SURAIN SINGH (DEAD) BY LRS. AND ORS.

v.

MEHENGHA (DEAD) BY LRS.

FEBRUARY 1, 1996

B [K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Code of Civil Procedure, 1908/Transfer of Property Act, 1872 :*

C *Suit—Plea that it was obtained by fraud, misrepresentation and without consideration—Trial Court dismissing the suit—Appellate Court reversed the finding—High Court considered the evidence and reversed the decree of the appellate court and confirmed the decree of the trial Court—Held : 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 record a finding—Material evidence and relevant circumstances not adverted to by the first appellate court—Therefore the High Court had rightly done that exercise—Being a finding of fact no further interference called for.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2195 of 1977.

E From the Judgment and Order dated 27.9.76 of the Punjab & Haryana High Court in R.S.A.No. 878 of 1964.

S.K. Gambhir for the appellants.

F K.K. Mohan for the Respondents.

The following Order of the Court was delivered :

G This appeal by special leave arises from the judgment of the Punjab & Haryana High Court in R.S.A.No. 878 of 1964 dated September 27, 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 September 29, 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 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 had 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 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 by 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 our further interference.

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

G.N.

Appeal dismissed.