

**(1988) 10 P&H CK 0009**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 407 of 1986

Raj Kumar and others

APPELLANT

Vs

The State of Haryana

RESPONDENT

**Date of Decision:** Oct. 28, 1988

**Acts Referred:**

- Land Acquisition Act, 1894 - Section 4

**Hon'ble Judges:** I.S. Tiwana, J

**Bench:** Single Bench

**Advocate:** V.K. Jain and Mr. S.K. Vij, for the Appellant; S.C. Mohunta, A.G. Hy. And Mr. N.K. Kapoor, for the Respondent

**Final Decision:** Dismissed

**Judgement**

I.S. Tiwana, J.

The Appellants whose acquired land had initially been evaluated at the rate of Rs. 40,000/- per acre, by the land Acquisition Collector, impugn the award of the lower Court fixing it at Rs. 61,000/- per acre, on the ground that it is unfair and inadequate. They maintain that a sum of Rs. 9,700/- allowed as a cost of the boundary wall which surrounded the acquired land is highly unjust. They further plead that there was no reason to not to grant any compensation for the tubewell sunk by them in killa No. 28/22/2. Having heard the learned Counsel for the parties at some length in the light of the evidence on record, I, however, find no merit in this appeal.

2. So far as the question of potential of the acquired land for being used for residential or commercial purposes is concerned, the same is not in dispute. As a matter of fact, the learned Counsel for the Respondent does not contest the following conclusion record by the lower Court in this regard:-

It is thus apparent that the acquired land had the potential for being used for residential and commercial purposes and that compensation for this land had to be

awarded at a flat rate as was rightly done by the Land Acquisition Collector.

The land has been acquired as a consequence of the notification published u/s 4 of the Land Acquisition Act, on 30th March, 1983.

3. So far as the question of determining the market value of this land is concerned, the same has undisputedly been fixed of the light of Exhibit P-14, copy of the sale deed dated 16th June, 1982, pertaining to the sale of 23 kanals and marla of land for a sum of Rs. 2,73,700/- i.e. at the rate of Rs. 95,000/- per acre, approximately ; it is at this rate the Appellants demand compensation.

4. It is not a matter of dispute that the land covered by this transaction forms part of the acquired land and is, therefore, the best possible basis to determine its market value. The lower Court has, however, declined to accept the genuineness of the sale consideration mentioned in Exhibit P-14 for a wide variety of reasons. It is this aspect of the matter which is seriously under challenge.

5. As per the contents of Exhibit P-14. Rs. 35,000/- were paid to the vendor on 6th February, 1982, as earnest money and thereafter another sum of Rs. 64,000/- was paid to him on 10th June, 1982, as additional earnest money. The balance amount of Rs. 1,74,700/- was paid at the time of the registration of the sale deed on 16th June 1982. As pointed out earlier, the Court refused to accept the genuineness of the money paid prior to the date of registration of the document for want of any legal evidence. Neither the agreement dated 6th February, 1982, has been produced or proved nor any document relating to the payment of Rs. 64,000/- on 0th June, 1982, has been brought on record. The stand of the learned Counsel for the Appellants however, in the light of Section 51-A of the Act and certain observations of their Lordships of the Supreme Court in Smt. Rani and Another Vs. Smt. Santa Bala Debnath and Others, is that the onus of proving the non-payment of the entire sale consideration was on the acquiring authorities and not on the claimant; they having failed to prove the same, the Court should have gone by the contents of the document, i. e., Exhibit P-14. In other words, the payment of the entire sale consideration by the vendee to the vendor should have been accepted. This steed, to my mind, does not merit acceptance.

6. Section 51-A of the Act only says that in any proceeding under this Act a certified copy of a document registered under the Registration Act, 1908 (16 of 1908) including a copy given u/s 57 of that Act would be accepted as evidence of the transaction recorded in such document." This section appears to have been incorporated in the Act to obviate the requirements of Sections 64 and 65 of the Evidence Act which laws down certain conditions which need to be satisfied before copy of a registered document can be accepted as secondary evidence of the same i. e. the original. Prior to the incorporation of this section, it was necessary in these proceedings to prove the contents of the original document i. e. the sale deed. Certified copy of such a document could be produced only as secondary evidence

after laying the necessary foundation for letting it in u/s 65 of the Evidence Act. This requirement of law appears to have been done away with by the present Section 51-A, referred to above. Otherwise, what value, worth or weight age has to be given to a document produced under this section is not laid down any where. Thus, the contents of the sale deed Exhibit P-14 may be taken to be proved yet it does not mean that the Court has to accept every bit of it as genuine or truthful. More so, if the attending circumstances are there to belie the said contents. It ultimately depends on the facts of each case as to how much a document produced u/s 51-A of the Act has to be accepted or believed. Similarly, I am of the view that the following observations of the Supreme Court in Shrimati Rani's case (supra) on which the learned Counsel for the Appellants places primary reliance do not lay down that the Court has to blindly accept the contents of such a document i. e. the one produced u/s 51-A of the Act and without murmur:-

It is true that apart from the recital about the payment of Rs. 899/- there is no other documentary evidence to prove that payment The burden of proving that the consideration was not received by the vendor, however, lay upon the Plaintiffs and no serious attempt was made to discharge that burden. The Plaintiffs set up the case that rupees 500/- were taken back from Sarala after she left the Sub-Registrar's office The High Court disbelieved this part of the case about repayment of the amount of rupees 500/- by Sarala received by her before the Sub Registrar The High Court observed that about the payment of the balance of the consideration, namely rupees 899/-, "there was no evidence at all on the side of the Defendants that the same was paid." In our judgment, the High Court misconceived the nature of the onus which lay upon the Plaintiffs to prove that the consideration which it was recited in the deed was received by Sarala was not in fact received by her and a false recital was made. The recitals in the deed are supported by the testimony of Sailendra Nath Nandi who said that the entire consideration was received by Sarala. We are unable to accept the view of the High Court that the sale deed was not supported by full consideration.

This was a case where the sons of a vendor, namely, Sarala, had filed a suit for declaration that the sale deed dated March 13, 1942 executed by her was not binding upon the Plaintiffs because it was executed without legal necessity. The trial Judge while holding that Sarala was in "strained financial circumstances", recorded the conclusion that the sale had been effected for legal necessity. It was also observed by the learned Judge that execution of the sale deed was obtained by fraud, mis-representation and undue influence, was not seriously pressed inasmuch as there was no evidence worth the name adduced" to support that case. On an appeal against this decree, the learned Judges of the High Court accepted the case of the Plaintiffs to the extent that the vendor had been induced to sell by persuasion and undue influence by Sakha Nath Ghosh husband of Defendant No. 1. The High Court also observed that it was doubtful whether even full consideration for the sale was paid. Further holding that the Defendants" case of legal necessity was not

proved and on that account the sale deed executed by Sarala was not binding upon the Plaintiffs, modified the decree. It appears from the contents of the report that the case set-up by the Plaintiffs so far as it related to the sale consideration was that the amount of Rs. 500/- alleged to have been paid before the Sub-Registrar at the time of the registration of the document had been received back from the executant or the vendor. The Plaintiffs having failed to prove their positive stand about repayment to the vendor, their Lordships observed "the High Court mis conceived the nature of the onus which lay upon the Plaintiffs to prove that the consideration which it was recite in the deed was received by Sarala was not in fact received by her and a false recital was made" Otherwise if the case of a plaintiff is that at the time of execution of a particular sale deed no sale consideration was paid what negative evidence can he possibly lead to prove such non payment. It appears that in the above noted case the Plaintiffs had nowhere alleged that the amounts stated to have been paid to Smt Sarala earlier to the date of the execution of the sale deed were not so paid. That is why their Lordships made the observations referred to above. On the other hand, it appears from the earlier part of the quote that the case set-up by the Plaintiffs was only that Rs 500/- said to have been paid to the vendor at the time of the execution of the sale deed were repaid to her after the execution of the said document. No such general principle that whenever a sale deed is produced and proved on record, the contents of the same have to be accepted as truthful inasmuch as the payment of the alleged sale consideration has to be taken as conclusively proved appears to have been laid down by their Lordships I am therefore, satisfied that the lower Court was perfectly justified in holding that the sale deed Exhibit P-14 was for a consideration of Rs. 1,74,700/-only The reasons for not accepting the payment of the balance amount of the sale consideration have been specified in paras 18 to 22 of the judgment with which I fully agree I am therefore satisfied that the lower Court has rightly determined the market value of the acquired land and the said conclusion calls for no interference

7. No evidence worth the name has been led to show that the compensation paid for the boundary wall i. e Rs, 9700/- was in any way inadequate Similarly the very existence of the tubewell in the acquired land is highly doubtful Therefore, the conclusion of the lower Court in this regard remains unassailable.

8. No other point has been urged on behalf of the Appellants.

9. The net result of the discussion above thus is that the appeal fails and is dismissed, but with no order as to costs.