

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA No.326 of 1988.
Decided on:-May 13th, 2015.

Kishan Chand.Appellant.

Versus

Amar Singh.Respondent.

CORAM: *HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.*

Present:- Mr. Gurdial Singh Jaswal, Advocate
for the appellant.

Mr. Ravi Gakhar, Advocate for
Mr. Jagdish Manchanda, Advocate
for the respondent.

Dr. Bharat Bhushan Parsoon, J.

This Regular Second Appeal is directed against judgment and decree dated 3.10.1987 passed by Additional District Judge, Hoshiarpur vide which judgment and decree dated 15.11.1986 of the lower court, dismissing the suit of plaintiff Amar Singh, respondent herein, for seeking a decree for declaration claiming cancellation of the sale deed dated 10.5.1965 and mutation No.1384 in respect of the suit land, were reversed and, consequently, suit of the plaintiff was decreed. Sequelly, sale deed dated 10.5.1965 as also mutation No.1384 sanctioned thereafter in respect of the suit land were held to be void, ineffective and inoperative qua the right, title

and interest of the plaintiff, respondent herein.

2. As per the case of the respondent/plaintiff, defendant Kishan Chand, appellant herein, had purchased land from him vide sale deed of 10.5.1965. At the time of delivery of possession to the defendant, it was discovered by the parties that the sale deed had inadvertently been effected in respect of unwanted Khasra numbers. The defendant had refused to take physical possession of the land. Sequelley, the parties mutually agreed to revoke the sale deed. Such settlement of the parties was caged in a document dated 23.12.1983. In terms of this agreement between the parties, a sale deed in respect of another land measuring 2 Kanals adjoining to the land of the defendant, was to be effected by the plaintiff and the defendant was not to act upon the mutation sanctioned in his name on the basis of sale deed dated 10.5.1965. When the defendant started drifting away from the settlement, the plaintiff had brought the suit for enforcement of the settlement made vide agreement dated 23.12.1983.

3. The defendant, appellant herein, had contested the suit tooth and nail and claimed the subsequent settlement of 23.12.1983 to be only a paper transaction. Legality and validity of sale deed as also of the mutation sanctioned thereto, was asserted. It is averred that possession of the suit land was delivered to the defendant who is now in actual possession thereof. Dismissal of the suit was sought.

4. No replication to the written statement was preferred by the plaintiff. Vide order dated 17.2.1986 the lower court had settled the following issues for adjudication of rival claims of the parties:

1. Whether the parties mutually agreed to revoke the sale deed dated 10.5.1965 vide agreement dated 23.12.1983?
OPP

2. Whether the plaintiff is entitled to the declaration prayed for? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the suit is time barred? OPD
5. Whether the plaintiff has not valued the suit property correctly for purposes of court fee and jurisdiction? OPD
6. Whether the plaintiff is estopped to file the present suit by his own act and conduct? OPD
7. Whether the alleged agreement dated 23.12.1983 is the result of fraud and misrepresentation? OPD
8. Relief.

5. After receiving oral as well as documentary evidence led by the parties and providing a hearing to their respective counsel, issues No.1 to 6 were decided against the plaintiff, whereas issue No.7 was decided against the defendant and consequently, suit of the plaintiff was dismissed by the lower court vide judgment dated 15.11.1986. The decree had followed.

6. The decree of the lower court was taken in appeal by the plaintiff. Agreeing with the claim of the plaintiff, reversing the judgment and decree dated 15.11.1986 of the lower court, his suit was decreed by the first appellate court vide judgment and decree dated 3.10.1987.

7. In this Regular Second Appeal, adjudication made by the first appellate court is under attack. It is claimed by the defendant, appellant herein, that agreement dated 23.12.1983 (Ex.P3) does not create or extinguish any right of the parties because it could have been possible only vide a registered document. Questioning enforceability of the document

(Ex.P3), it is claimed that the suit for mere declaration even otherwise was not maintainable. It is urged that the first appellate court did not deal with every issue independently and merely holding that the sale was void had decreed the suit of the plaintiff whereas findings on issues No.2, 4 and 6 had not even been set aside. Questioning approach of the first appellate court in attaching weight to documents Ex.P1 and Ex.P2, it is claimed that Sections 17 of the Registration Act, 1908 and 54 of the Transfer of Property Act, 1882 were not given effect. Claiming those to be perverse as also based on surmises and conjectures, praying for reversal of the judgment and decree of the first appellate court, acceptance of the Regular Second Appeal, has been sought.

8. In this Regular Second Appeal, substantial questions of law needing determination by this Court are as under:

- (i) Whether a registered document can be cancelled by an unregistered document/agreement and it is enforceable at law?
- (ii) Whether the agreement cancelling the registered sale deed after a lapse of 18 years and after sanction of the mutation, is permissible under the law?
- (iii) Whether cancellation of registered sale deed by an unregistered agreement is hit by the provisions of Sections 23 and 25 of the Indian Contract Act?
- (iv) Whether the suit simply for declaration can be filed and a decree for cancellation of sale deed can be given without claiming the alternative relief of injunction, if the plaintiff is in possession, or for possession when the plaintiff is out of possession?
- (v) Whether the revocation of registered sale deed is permissible under the law by an unregistered agreement?

- (vi) Whether the sale deed can be cancelled after the expiry of period of 18 years and there is no period of limitation prescribed under the Limitation Act?
- (vii) Whether the plaintiff claims that the sale deed was cancelled/revoked vide endorsement executed on the back of sale deed on 19.4.1971, what will be the status of agreement dated 23.12.1983, whereby the plaintiff claims cancellation of sale deed dated 10.5.1965? Whether such agreement is enforceable in law?
- (viii) Whether the document impermissible under the law can be enforced and given effect by the courts, particularly when the said document is unregistered whereas the document sought to be cancelled was duly registered under the law?

9. Arguments were advanced by the counsel for the parties referring to their rival claims.

10. Sale deed dated 10.5.1965 as well as mutation No.1834 sanctioned pursuant thereto in respect of the suit land, are under challenge in this litigation. Sale deed is registered one. It was sought to be avoided by the plaintiff, now respondent, on the basis of another unregistered agreement dated 23.12.1983 (Ex.P3).

11. The reason for such cancellation according to the plaintiff, respondent herein, is that at the time of delivery of possession of land, both the parties had found that there was wrong description of the land. However, this plea is not tenable. Merely because sale deed (Ex.P1) was handed over to the plaintiff on 23.12.1983 (Ex.P3) and later was produced by the plaintiff from his possession during the course of proceedings of the suit, ipso facto is not a ground to establish that the said sale deed had been cancelled. After execution of endorsement (Ex.P2) on 19.4.1971 on the back of sale deed (Ex.P1), execution of another sale deed (Ex.P4) on 19.4.1971 by the plaintiff

in favour of the defendant, again is of no legal significance so far as validity of sale deed dated 10.5.1965 is concerned.

12. If we go by the pleadings, clear case of the plaintiff is that sale deed dated 10.5.1965 stood cancelled in view of agreement dated 23.12.1983 (Ex.P3). This subsequent agreement is unregistered whereas sale deed is a registered document. In view of Section 17 of the Registration Act, 1908, any alienation of immovable property valuing more than Rs.99/- can be done only by a registered document. Value of the property is more than Rs.99/-, is not a matter of dispute. Thus cancellation of sale deed (Ex.P1) could have been done only by a registered document. Agreement dated 23.12.1983 (Ex.P3) ipso facto does not affect right, title and interest in the property in terms of sale deed (Ex.P1).

13. In short, the unregistered document has no legal value. Even otherwise, sale deed (Ex.P1) being registered one could not have been cancelled by way of an unregistered document.

14. Viewed from another angle, endorsement (Ex.P2) on the back of sale deed (Ex.P1) is of 19.4.1971 which pertains only to payment of Rs.1,000/- as mortgage money qua some mortgage and is not at all connected with cancellation of the sale deed. For cancellation of the sale deed (Ex.P1) the only document produced in evidence by the plaintiff is of 23.12.1983 (Ex.P3). Sequel, plea of the respondent-plaintiff that on the day of endorsement (Ex.P2) i.e. 19.4.1971, another sale deed Ex.P4 was executed by the plaintiff in favour of the defendant is nothing but a confusion sought to be created by him whereas the transactions of 19.4.1971 i.e. Endorsement (Ex.P2) and execution of another sale deed (Ex.P4) have absolutely no relation with cancellation (Ex.P3) of sale deed (Ex.P1).

15. The first appellate court thus was completely in error while interpreting agreement dated 23.12.1983 (Ex.P3) to the effect that it was holding key to the entire dispute. The first appellate court also wrongly held it to be valid notwithstanding the fact that it is unregistered and could neither have created or diluted right, title or interest in the property in view of Section 17 of the Registration Act, 1908 as has been mentioned earlier. How an unregistered document could annihilate affect of a registered document, has not been explained by the first appellate court at all. Rather, the first appellate court without any reasons sustainable in law, has wrongly reversed the well-reasoned and transparent findings of the lower court.

16. If we calculate the time, it is after more than 18 years of execution and registration of sale deed (Ex.P1) that it was sought to be cancelled. Even if the sale deed was to be avoided in its legal effects and was to be cancelled because the same had allegedly not incorporated the common intention of the parties in terms of Sections 13 and 20 of the Indian Contract Act, 1872, it could be done away only by way of a registered document and that too only within three years of its execution and not thereafter.

17. The lower court was thus right in coming to a conclusion that the suit was also time barred. The first appellate court has wrongly reversed the findings on these issues taking accrual of the cause of action w.e.f. 23.12.1983. No doubt, the suit was instituted on 4.10.1985 but the sale deed sought to be avoided is of 10.5.1965. It is not the agreement dated 23.12.1983 which is sought to be avoided. Thus, cause of action is to be seen from the date of execution of the sale deed and not from the date of agreement of 23.12.1983. The suit, thus, is badly barred by limitation. Sequel, findings of the lower court on issue No.4 are correct and are thus

affirmed.

18. The first appellate court also went wrong in reversing the findings of lower court on issue No.3 whereby maintainability of the suit had been adjudicated against the plaintiff. Concedingly, the plaintiff had sold the suit land vide registered sale deed of 10.5.1965 (Ex.P1) to the defendant. After execution of the sale deed, mutation No.1384 had also been sanctioned in favour of the vendee/defendant. Consequently, he had become a co-sharer in the property whereas the plaintiff was left with no right, title or interest in the land. When sale deed dated 10.5.1965 (Ex.P1) continues to be valid and defendant had become owner of the suit property, suit of the plaintiff seeking cancellation of the sale deed dated 10.5.1965 also is not maintainable. Consequently, findings of the lower court on issue No.3 being correct are also affirmed.

19. If we go by the averments in the pleadings, the plaintiff had sought a decree of declaration that the sale deed dated 10.5.1965 (Ex.P1) was null and void and was not binding on his rights. In fact, cancellation of sale deed (Ex.P1) on the basis of agreement dated 23.12.1983 is neither valid nor legal. Sequelly, ad-valorem court fee was payable, which had also not been paid. Since on findings of the other issues as well, the suit was dismissed, so, the plaintiff was not given time to make up deficiency in the court fee. The first appellate court did not take up this aspect for discussion in detail and had just bye-passed it. Otherwise, findings of the lower court are correct on issue No.5 and thus are affirmed.

20. The plaintiff had rightly been taking the sale deed dated 10.5.1965 (Ex.P1) to be correct. It continued till 23.12.1983 when another unregistered agreement (Ex.P3) was made to avoid it. Thus, by his own act and conduct, the plaintiff is estopped from filing the present suit and

findings of the lower court on issue No.6 against the plaintiff, are also correct and are affirmed.

21. Findings of the lower court on issues No.1, 2 and 7 are also correct and are thus affirmed as there is no evidence that it was on account of fraud and misrepresentation that agreement dated 23.12.1983 had been executed between the parties.

22. Keeping in view the facts and circumstances discussed hereinabove, all the substantial questions of law are answered against the respondent-plaintiff. It is specifically held that the registered document cannot be cancelled by way of an unregistered document and simple suit for declaration without claiming alternative relief of injunction if the plaintiff is in possession or of possession when the plaintiff is out of possession, is also not maintainable. Further, the suit is not even properly valued for the purpose of court fee.

23. Sequelly, setting aside the impugned judgment and decree dated 3.10.1987 of the first appellate court, this Regular Second Appeal is accepted. Suit of the respondent/plaintiff is dismissed. Affirming the findings recorded by the lower court, judgment and decree dated 15.11.1986 are restored. Decree sheet be prepared.

May 13th, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes