

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

Regular Second Appeal No.2012 of 2010 (O&M)

Date of decision: 5.5.2015

Gurdeep Singh

... Appellant

Versus

Charan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Harsh Aggarwal, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. This appeal was filed on 9th December, 2009. The Registry raised objections which were removed and the case was re-filed on 15th March, 2010. The appeal came up for motion hearing, for the first time, on 18th August, 2010 when a request was made for an adjournment. The case was adjourned to 22nd December, 2010. Thereafter, the requests for adjournments were made one after the other before the same and different Benches which add up to 6 adjournments upto 22nd December, 2011 when the case was adjourned to 20th March, 2012. On 4 of those dates, none appeared for the appellant but this Court adjourned the appeal on either written or oral requests obviously to avoid any miscarriage of justice and to hear counsel on the second appeal. Ultimately, when none appeared on 20th

March, 2012 and after the case was called twice and the appellant went unrepresented, the Court then recorded that even on previous dates, nobody appeared and repeated adjournments have been sought. The Court was left with no option but to dismiss the appeal in default and non-appearance. This led to filing an application for recall of the order which was graciously accepted on 4th July, 2012 and the appeal was restored. Even thereafter, 6 adjournments were sought up to 16th September, 2014 and in this long chain of adjournments, the matter was posted for hearing today.

2. After hearing counsel Harsh Aggarwal appearing for the appellant, I would dismiss this appeal for the reasons stated below.

3. However, before recording reasons, a few facts are necessary to notice. The appellant was the plaintiff in Civil Suit # 173 of 12th August, 1998 brought against 21 defendants. The suit was for brought for declaration to the effect that the plaintiff is joint owner in possession of the land measuring 2K-17M with 4 other co-sharers each taking 1/5th share in the suit property. Similarly, he made claim against two other properties which were 2K-12M out of the land measuring 5K-18M falling in the revenue estate of Naunitpur, Police Station, Mahilpur, District Hoshiarpur. Certain mutations were challenged in the land described as 5M out of the land measuring 1K-7M with Khewat and Khatauni numbers as described in the suit with reference to Jamabandis 1994-95 and 1991-1992 with respect to the two parcels of suit land. The plaintiff also sought consequential relief of permanent injunction restraining defendants # 1 to 5 from denying ownership rights of the plaintiff, and against defendants # 6 to 18 from taking forcible possession or from raising construction on any specific

portion of the suit property and interfering in the possession of the plaintiff and defendants # 6 to 18 of the suit. Prayer for joint possession was also made.

4. Shiv Kumar alias Shiv Singh son of Inder Singh son of Kirpa was said to be the joint owner in possession of the land measuring 2K-12M out of land measuring 5K-18M as reflected in the jamabandi for the year 1989-90 in the suit village. Shiv Kumar alias Shiv Singh was also owner in possession of 5M out of land measuring 1K-7M in another village namely Tohlian, Hadbast #19, P.S.Mahilpur, Tehsil Garhshankar, District Hoshiarpur as depicted in the Headnote [b] of the plaint. Three properties were described in the plaint as [a], [b] and [c]. Shiv Kumar alias Shiv Singh died in the year 1988 unmarried and without issue. He left behind his natural heirs i.e. his brothers Hansa Singh, Parkash Singh, Darshan Singh and sister Gurbachan Kaur and Prakash and they succeeded to the said property and became owners in possession thereof to the extent of 1/5th share each coming from Shiv Kumar alias Shiv Singh. Hansa Singh died in the year 1997. The plaintiff pleaded that Hansa Singh executed a valid registered will in his favour. He is his sole legal heir and thus, he asserts that he has inherited 1/5th share in both the suit properties. Prakash died intestate leaving behind defendants # 6 to 9 his sons and daughter and widow defendants # 10 and 11, and thereby they became legal heirs and owners in possession of 1/5th share of the suit property after the death of Prakash. Darshan Singh died intestate in 1995 leaving behind defendant # 12 his widow, and his sons defendants # 13 and 14, daughters defendants # 15 and 16 and they have 1/5th share. That is how the present generation of the

family are joint owners in possession of suit property.

5. The plaintiff further alleged that defendant # 1 Gurmail Singh (now deceased) etc. got mutation of inheritance of Shiv Kumar alias Shiv Singh in their names at the back of the plaintiff and his father Hansa Singh and defendant Prakash without informing them of the mutation proceedings. The testamentary will is allegedly dated 8th July, 1974. The plaintiff asserted that Shiv Kumar alias Shiv Singh left behind no will and last testament and in case, the will is proved, then the same is false, forged and fictitious document which is not binding on his rights as it must have been the result of fraud, misrepresentation and undue influence and in connivance with Charan Singh and Gurmail Singh who were the scribe and witnesses. The plaintiff says he was not aware of mutation # 552 and 1140 entered in the name of Charan Singh and Gurmail Singh and mutation #576 of defendant # 5 entered on the basis of a sale deed although he came to know of these matters about six months before the suit was filed.

6. The plaintiff asserted that since Shiv Kumar alias Shiv Singh did not execute a will in favour of Charan Singh and Gurmail Singh, then defendants # 1 to 4 had no right to alienate any portion of the suit property to defendant # 5 and in case, execution of the sale deed is proved, then the instrument is illegal, null and void. It was the say of the plaintiff that if the joint possession of the plaintiff was not proved, and defendants # 1 to 5 had tried to dispossess from the suit land by force during the pendency of the suit, then he deserves the decree for joint possession. He claimed that defendants # 1 to 5 started to threaten the plaintiff by denying ownership and they began to interfere in his possession and started to raise

construction on a specific portion of the suit land on the basis of wrong revenue entry in their name. The plaintiff asserted his rights which were denied by contesting defendants # 1 to 5 since they do not admit his claim. It is from this point of time that the plaintiff asserts in the plaint that the cause of action arose to file the suit.

7. Defendant # 3 filed written statement and contested the case after notice was served on him and appearance put by the defendants. Several objections were taken including that of limitation, estoppel, conduct, admission and acquiescence apart from some other technical objections. Defendant # 1 asserted that he was a bona fide purchaser of land measuring 11Marlas-2½ Sarashi in property (a) buying it from Charan Singh son of Mota Singh through a registered sale deed dated 19th October, 1993 for consideration of ₹ 8,000/-. Similarly, he purchased from property (b) 4M-7M Sarasahis for a consideration of ₹ 20,000/- from Nirmal Singh and Charan Singh sons of Shakuntala Devi and Chanan Kaur daughters of Mota Singh son of Inder Singh through a registered sale deed dated 23rd May, 1996 while the land described in part (c) of the headnote to the plaint, another 4M of land out of 1K-7M in the same village for a valuable consideration of ₹ 16,000/- from Nirmal Singh, Charan Singh sons of Shakuntala Devi, Chanan Kaur daughters of Mota Singh son of Inder Singh resident of village Tohlian through a registered sale deed dated 16th August, 1996 and he is in possession thereof since then. Mutation has been sanctioned on 30th June, 1993. Furthermore, Charan Singh defendant had sold the *malba* of the house for a sum of ₹ 25,000/- vide separate receipts dated 11th October, 1993 exhibited on record.

8. An objection has been taken by defendant # 1 that the shares of the parties in the suit has been misdescribed and the plaint does not disclose reasons for arraying defendants # 1 to 4 as parties and it is only on a negative pleading that it was prayed in case the land has been sold, then it does not bind the rights of the plaintiff. The answering defendant # 1 has revealed certain facts in the written statement that bear out that Shiv Kumar alias Shiv Singh was looked after and survived by his nephew Charan Singh and Gurmail Singh sons of Mota Singh since he was happy with the services rendered by the two, he had executed a valid registered will on 8th July, 1974 registered on 9th July, 1974 in favour of Charan Singh and Gurmail Singh. After the death of Shiv Kumar alias Shiv Singh, Charan Singh and Gurmail Singh succeeded to his estate on the strength of the testamentary will and that his how they entered possession of the suit land as owners under mutation # 552 duly sanctioned in the presence of Hansa Singh, Gurbachan Kaur, Parkash Kaur, Darshan Singh and Parkash Singh. These persons also filed affidavit and admitted the genuineness of the will. Defendant # 1 admitted that Hansa Singh died in 1997 but refuted that he executed a will in favour of the plaintiff. In fact, Hansa Singh died intestate and was succeeded by his sons namely Harbhajan Singh, Tarsem Singh, plaintiff and daughters namely Resham Kaur and mutation of inheritance was sanctioned accordingly in the presence of Hansa Singh before he died. The defendants asserted that the plaintiff had knowledge of revenue entries from the very beginning, i.e., the date of sanctioning of the mutation and those mutations are not open to challenge. It is a valid and genuine document. The story that the defendants held out threats to the plaintiff, was refuted. No cause of action had accrued to the plaintiff to maintain the suit.

The suit deserves to be dismissed. A ceremonial replication was filed and taken on record and made part of pleadings.

9. The parties went to trial on the following issues : -
1. Whether the plaintiff alongwith defendants No.6 to 18 are joint owners in possession of the suit property? OPP.
 2. Whether mutation No.556, 578, 1140, 552 and 576 are illegal, null and void? OPP.
 - 2A. Whether Shiv Singh executed a valid registered will on 8.7.1974 registered on 9.7.1974 in favour of Charan Singh and Gurmail Singh? OPD
 3. Whether the plaintiff is entitled to the declaration as prayed for ? OPP
 4. Whether the plaintiff is entitled to the permanent injunction as prayed for ? OPP
 5. Whether in the alternative, the plaintiff is entitled to the decree for joint possession? OPP
 6. Whether the plaintiff is estopped from filing this suit by his act, conduct and admissions? OPD
 7. Whether the defendant No.5 is bona fide purchaser for valuable consideration and without notice? OPD
 8. Whether the suit is bad for non-joinder of heirs of Hansa? OPD
 9. Relief.
10. The plaintiff in order to prove his case examined PW1 Gurdev Singh, PW-2 Satpal Kalsi and himself stepped into the witness box as PW3 to support his version in the plaint. The defendants examined 5 witnesses

and closed their evidence.

11. Learned trial Judge examined minutely the oral and documentary evidence on record and the depositions of the witnesses produced by either side proving the testamentary will was good one and after appreciating the same, arrived at the conclusion that the will was registered before the Sub-Registrar of the District with a presumption of truth attached. The attesting witnesses and the Deed Writer who scribed the will deposed in favour of the defendants. The only question which remained to be examined was the signatures of the Shiv Kumar alias Shiv Singh on the will. The onus was on the defendants and they discharged it. Had the signatures not been genuine, then nothing stopped the plaintiff from leading rebuttal evidence in the shape of a hand writing expert to compare the thumb impressions of Shiv Kumar alias Shiv Singh with his samples to see if they were genuine but that was not done.

12. Learned trial Judge found not an iota of evidence from where it could be held that the will in question was a forged and fabricated document. Besides, the learned trial Court noticed that the plaintiff claimed ownership in the suit property through his father Hansa Singh but Hansa Singh never challenged the will in question during his life time and this was a circumstance that also leaned in favour of the genuineness of the will. If the will was a fake one, the plaintiff's father would have gone to the Court on it. If the defendant came via the will into the suit property and had stepped into the shoes of Shiv Kumar alias Shiv Singh, then it cannot be held that the plaintiff had become joint owner of the suit property on the basis of natural succession. The will had diverted natural succession to the

beneficiaries who became the rightful owners of the estate of the deceased bequeathed to them. Thus, issues # 1 and 2A were decided in favour of the defendants and against the plaintiff.

13. Issues # 2 and 7 have been dealt with separately by the learned trial Court and correctly so, since they belong to the same theme involving mutations and the rights of defendant # 5 Malkit Singh son of Chanan Singh settled as being bona fide purchasers of suit property for valuable consideration without notice of any encumbrance on it. To decide these two issues, the reference points were the three sale deeds of 19th January, 1993, 23rd May, 1995 and 16th August, 1996 whereby Malkit Singh purchased the property from plaintiff's brothers Charan Singh and Nirmal Singh. Therefore, Malkit Singh defendant became a bona fide purchaser. The suit was filed on 12th August, 1998, in case the limitation has to be worked with respect to the cause of action. The sale deed was duly proved on record and exhibited as D2, D5 and D6. In order to prove the sale deeds, the defendants produced DW4-Jarnail Singh brother of Malkit Singh who was marginal witness to the sale deed and he deposed accordingly in favour of the contesting defendants.

14. Prem Pal Deed Writer appeared as DW2 and proved his writing on the sale deed dated 16th August, 1996 executed by Nirmal Singh, Charan Singh etc. regarding the land measuring 4M in favour of Malkit Singh defendant # 5. The sale deed was witnessed by Satpal Numbardar and Bishamber Singh. The sale deed was duly entered in his register at Serial # 463. An entry Ex.D3 has been duly proved by Som Dutt, marginal witness who stated that on 19th October, 1993, Charan Singh son of Mota Singh sold

land measuring 2.5 Marlas to Malkit Singh.

15. Learned trial Court has examined in great detail the evidence and very painstakingly and has reached the conclusion that the defendants are protected as bona fide purchaser of the suit land for valuable consideration from clear title of sellers. They had no notice of any claim regarding the property since nothing was available in the revenue record to suggest otherwise, inspected by due diligence.

16. The remaining issues are dealt with but which are of no importance since the will Ex.D4 stood proved and so also the sale deeds which cumulatively disentitled the plaintiff from declaration sought of permanent injunction or a decree of joint possession. The suit was dismissed on 26th October, 2005.

17. The first appeal carried to the learned Additional District Judge, Hoshiarpur failed on 18th August, 2009 by an equally elaborate order. The Court of first appeal has examined the issue from various angles including with the help of case law and has affirmed the findings in the well reasoned judgment of learned trial Court and the appeal has been dismissed concurring with the findings of fact recorded by the trial court.

18. Feeling aggrieved, the plaintiff is in second appeal. The findings with respect to the three sale deeds and the will Ex.D4 involve pure questions of fact based on appreciation of evidence which is not liable to be disturbed in the second appeal. When the evidence has been read in a proper manner and on each fact-in-issue, then the view taken by both the Courts below on the preponderance of probabilities on pure questions of fact do not give rise to a substantial question of law in the present appeal. Learned trial

court and the court of first appeal are final on law and fact being the last courts to speak on such matters and the learned counsel for the appellant has miserably failed to point out a single flaw in the reasoning adopted by the courts below and I am now convinced that keeping this appeal in the motion hearing for 5 years is sufficient evidence that there was nothing in this case on merits to start with.

19. For the reasons given above, the appeal is dismissed. I hesitate to impose costs because notice has not been issued to the respondents so far in this appeal pending since the year 2010, when on the first date of hearing itself an adjournment was sought. So much time has been wasted in the making of the order sheets by misusing the large heartedness of the Court with counsel craving indulgence far too often.

(RAJIV NARAIN RAINA)
JUDGE

May 5, 2015
Paritosh Kumar