

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

RSA No.2965 of 2010
Date of decision: 15.01.2015

Lakhwinder Singh and another

...Appellants

Versus

Sawinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sandeep Arora, Advocate for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? YES
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Suit filed by the plaintiffs was dismissed by the trial court vide judgment and decree dated 17.11.2005. Appeal preferred against the said decree also failed and was dismissed on 14.12.2009. This is how, plaintiffs are before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiffs, they prayed for a decree for possession on the basis of title regarding land measuring 5 kanals 12 marlas, comprised in killa No.13/3/2, situated at village Hambowal, Tehsil and District Gurdaspur. It was averred that Gulzar Singh, father of the plaintiffs, was the owner of the suit property. Though originally the suit property belonged to Gulzar Singh and Budh Singh sons of

Moola Singh, but as Budh Singh died issueless, his share was inherited by his brother Gulzar Singh. Further, father's name of Gulzar Singh was Moola Singh and he was also known as Bur Singh. It was averred that Gulzar Singh died on 18.12.1969, and was succeeded by the plaintiffs qua his estate. However, defendants No.1 & 2 took forcible possession of the suit property from the plaintiffs in the year 2001, alleging that they had purchased the suit property from Gulzar Singh, vide a sale deed dated 06.03.1995. Mutation, pursuant to the said sale deed, was purported to have been sanctioned in favour of the defendants on 22.04.1995. Thus, sale deed dated 06.03.1995, was alleged to be a forged document and a result of fraud as Gulzar Singh had already died on 18.12.1969. Factum of sale deed and mutation was claimed to have been come to the knowledge of the plaintiffs only in the year 2001, when they were forcibly dispossessed from the suit property. Since defendants failed to acknowledge the claim of the plaintiffs and refused to deliver the possession of the suit property, thus, the suit.

In defence, it was pleaded, inter alia, by defendants No.1 & 2, that sale deed dated 06.03.1995 was a legal and valid document. Plaintiffs had accompanied their father Gulzar Singh to the Tehsil compound at the time of execution of the said sale deed. Even earlier, plaintiffs had raised a dispute in this respect, but the same was resolved with the

intervention of Sarpanch and other respectables of the village. So much so, plaintiffs even furnished an affidavit attested by the Executive Magistrate, wherein, they conceded that the sale deed dated 06.03.1995, was executed by Gulzar Singh in their presence. It was not denied that originally the suit property was owned by Gulzar Singh and his brother Budh Singh. And later as Budh Singh died issueless, his share was also inherited by Gulzar Singh. The plea that Gulzar Singh died on 18.12.1969, was specifically denied and the death entry, being relied upon in this regard, did not pertain to the father of the plaintiffs. Further, father's name of Gulzar Singh was Moola Singh and he had no other name, least Bur Singh. It was maintained that Gulzar Singh was alive at the time of execution of the sale deed on 06.03.1995. Therefore, no occasion of any forcible dispossession of the plaintiffs in the year 2001, as defendants obtained possession pursuant to sale deed dated 06.03.1995 itself.

Trial court, on a consideration of the matter in issue and evidence on record, found that plaintiffs to prove that Gulzar Singh had died on 18.12.1969, had brought on record a death certificate (Ex.P2), but a perusal thereof showed that the name of the deceased therein was mentioned as Gulzar Singh son of Bur Singh and not Gulzar Singh son of Moola Singh. Indisputably, father's name of Gulzar Singh was Moola Singh. Plea of the plaintiffs that father of Gulzar Singh i.e.

Moola Singh, was also known as Bur Singh, remained completely unsubstantiated on record. No evidence in this regard was brought on record by the plaintiffs. So much so, even in the jamabandi (Ex.P4), Gulzar Singh was recorded to be the son of Moola Singh. Still further, PW2 testified in his statement that name of father of Gulzar Singh was only Moola Singh and not Bur Singh. Accordingly, it was observed that if father of Gulzar Singh was also known as Bur Singh then, the said name would have even reflected in the records of right. Resultantly, death certificate (Ex.P2) did not pertain to Gulzar Singh son of Moola Singh, executant of the sale deed (Ex.D1). Cross-examination of PW2 further testified that death certificate (Ex.P2) i.e. certificate form was filled up on the table of plaintiffs' counsel as per the directions given by him and was produced in the court on the same day. He further admitted as correct that the name of father of Gulzar Singh was Moola Singh and Bur Singh was not his name. In so far as the plea of the plaintiffs that they acquired knowledge, as regards the sale deed and mutation that was sanctioned in favour of defendants, in the year 2001, when they were forcibly dispossessed, it was observed that none other than plaintiff-Mangal Singh (PW4) himself testified in his cross-examination that defendants were in possession of the suit land since 06.03.1995. The date, when the sale deed in question (Ex.D1) was executed in favour of the defendants.

Therefore, it was proved that defendants came in possession of the suit property, pursuant to a sale deed dated 06.03.1995, and since then they were being shown as owner in possession. That being so, simple because the attesting witnesses of the sale deed (Ex.D1), had joined hands with the plaintiffs could not impair its due and valid execution. In any case, execution of the sale deed dated 06.03.1995, was duly proved by its Scribe (DW1). The testimonies of PW1 & PW3 (attesting witnesses of the sale deed) were discarded, as they admitted in their cross-examination that they never attested any document without going through the contents and without the executant of the document being well known to them, however, as regards the sale deed (Ex.D1), they failed to render any explanation as to what prompted to them to attest the said sale deed. Still further, both the said witnesses testified that they were not aware of the contents of their affidavits that were tendered into evidence. In any case, their version that Gulzar Singh was not known to them, was found to be wholly incredible as both the said witnesses happened to be the Lambardars of the village. Further, plaintiffs claimed that Gulzar Singh had died in the year 1969, yet for a period of 30 years, they did not resort to any measure for getting the mutation sanctioned qua suit property in their favour. That showed that their version that Gulzar Singh died on 18.12.1969, was wholly false. Quite obviously, if the death of

Gulzar Singh had actually taken place in the year 1969, plaintiffs would not have remained quite for a period of 25 years. Affidavit (Ex.D2), the execution and attestation whereof was duly proved in the testimonies of DW3 & DW4, unraveled that both the plaintiffs had admitted the execution of the sale deed dated 06.03.1995, by their father Gulzar Singh and receiving of sale consideration. Further, the said affidavit also bears the photographs of the plaintiffs, which are cross thumb marked by both. Still further, stamp paper, upon which the said affidavit was executed, was purchased on 03.11.2000 and the same was scribed and got attested on 06.11.2000. That also falsifies the version of the plaintiffs that they were forcibly dispossessed by the defendants in the year 2001. That being so, it was concluded that defendants being in lawful possession of the suit property, pursuant to a sale deed (Ex.D1), plaintiffs had no right, title or interest therein. The suit was accordingly, dismissed.

Being dissatisfied with the decree, plaintiffs preferred an appeal. First appellate court reviewed the matter in issue, evidence on record and on an analysis thereof found itself in concurrence with the view drawn by the trial court and the findings recorded in support thereof. Accordingly, the appeal was dismissed.

I have heard learned counsel for the appellants at length and perused the RSA paper book.

Learned counsel for the appellants simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is wholly devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Needless to assert, for plaintiffs to be entitled to a decree for possession, they were required to prove that they had a title thereto. The claim set out by the defendants that they were owners of the suit property, pursuant to a sale deed dated 06.05.1996, executed by plaintiffs' father, namely, Gulzar Singh, was duly proved. So much so, pursuant to the said sale deed, the property was mutated in favour of the defendants on 22.04.1995, and since then they were shown to be owners in possession of the suit land in the records of right. Plaintiffs had questioned the execution and the validity of the sale deed on the ground that Gulzar Singh had since died on 18.12.1969, and thus, the sale deed in question was a result of fraud. Ex facie, plaintiffs failed to lead any cogent evidence on record to show that their father Gulzar Singh had indeed died on 18.12.1969. To prove their claim, plaintiffs produced on record a death certificate (Ex.P2). Both the courts, on a due and comprehensive consideration of the said

document and the records, found that the said document pertained to Gulzar Singh son of Bur Singh. Whereas, father of the plaintiffs i.e. Gulzar Singh was son of Moola Singh. No evidence was brought on record to substantiate that Moola Singh was also known as Bur Singh. The document that completely vitiates and falsifies the versions of the plaintiffs is the affidavit, Ex.D2. Execution and attestation of the said document was duly proved on record by DW3 and DW5. A reading thereof unravels that concededly the sale deed dated 06.03.1995, was executed by the plaintiffs' father in favour of the defendants in their presence. They even conceded the receipt of sale consideration by their father Gulzar Singh. The said document bears the photographs of the plaintiffs, which are cross thumb marked by both the plaintiffs. Had father of the plaintiffs i.e. Gulzar Singh actually died on 18.12.1969, suit property would have been mutated in their names. In fact, that that mutation was sanctioned in favour of the defendants, suit property was shown to be owned and possessed by Gulzar Singh. Meaning thereby, he indeed died after the execution of the sale deed dated 06.03.1995. Plaintiffs, for obvious reasons, kept the actual date of death of Gulzar Singh concealed from the court. Hence, they failed to prove that they were even in possession of the suit property, question of their dispossession pales into insignificance. The story as regards forcible dispossession was apparently false.

Learned counsel for the appellants could not point out as to how the conclusions that have concurrently been recorded by both the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

January 15, 2015
Rajan

(Arun Palli)
Judge