

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

**Regular Second Appeal No.1983 of 2012 (O&M)
Date of Decision: May 06, 2015.**

Baljinder Singh and others

.....APPELLANT(s).

VERSUS

Karam Singh and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Satinder Khanna, Advocate
for the appellant (s).

Mr. Jagjit Singh, Advocate
for respondent No.1.

SURINDER GUPTA, J.

Appellants-plaintiffs Baljinder Singh and others have come up with this regular second appeal against the concurrent finding of the Courts below whereby their suit for declaration to the effect that appellants-plaintiffs No.8 and 9 Satnam Singh and Surjit Singh were owners in possession of land measuring 32 kanals 13 marlas comprised in khewat/khatauni No.60/119 consisting of khasra Nos.14//17/2(1-9), 18 (8-0), 23(8-0), 24(8-0), 25 (7-4) situated within the revenue estate of village Majorwala, Tehsil and District Kapurthala and challenging judgment and decree dated 12.11.2002 passed in civil suit No.734 of 24.12.1999/239 of 20.08.2002 captioned as *Karam Singh Versus Malkiat Singh* passed by Additional Civil Judge (Senior Division), Kapurthala as illegal, void, non-est and inoperative against the rights of the appellants-plaintiffs, was dismissed. The relief of injunction restraining

respondent-defendant No.1 Karam Singh from taking possession of the suit land was also declined.

The case of the plaintiffs, in brief, is that the suit land was allotted to Karam Singh, respondent-defendant No.1, being a scheduled caste, under Section 4 of the Punjab Package Deal Properties (Disposal) Act, 1974 on 24.01.1977. The terms of allotment barred the allottee from alienating the allotted land for a period of twenty years from the date of issuance of sale certificate except in case of transfer in favour of other scheduled caste. The suit land was alienated, after its allotment to respondent-defendant No.1, as follows:-

- (i) Respondent-defendant No.1 Karam Singh executed two sale deeds dated 18.10.1994 and 26.09.1994 in favour of respondent-defendant No.2 Malkiat Singh alias Dadu pertaining to the suit land. Mutation Nos. 636 and 641 on the basis of said sale deeds were duly entered in the revenue record.
- (ii) Respondent-defendant No.2 Malkiat Singh sold the suit land to Baljinder Singh appellant-plaintiff No.1 vide sale deeds dated 03.09.1997 and 04.09.1997 and delivered the actual possession to the vendee. Mutation No.659 and 660 were duly sanctioned in favour of appellant-plaintiff No.1 on the basis of sale deeds. Baljinder Singh appellant-plaintiff No.1 does not belong to scheduled caste but had purchased the land after the restriction of sale for twenty years was over.
- (iii) Appellant-plaintiff No.1 Baljinder Singh exchanged the suit land along with some other land in the year 1998 with appellant-plaintiff Nos.2 to 7 and delivered possession of the suit land. The mutation of exchange bearing No.669 was duly sanctioned in the revenue record.
- (iv) Appellant-plaintiffs No.2 to 7 further exchanged the land in dispute with appellant-plaintiffs No.8 and 9 in the year 2001 and delivered the possession to them, as a result of which appellant-plaintiffs No.8 and 9 became owner in possession of the suit land.

Respondent-defendant No.1 despite having knowledge of the sale deeds executed by him in favour of respondent-defendant No.2 and subsequent sale deeds by respondent-defendant No.2 in favour of appellant-plaintiff No.1, made a complaint before SUB DIVISIONAL MAGISTRATE Kapurthala, where after inquiry, it was observed that the above sale deeds were perfectly legal and genuine documents. Respondent-defendant No.1 filed another complaint regarding the above sale transactions with D.S.P. Kapurthala, which after due inquiry was ordered to be filed.

Respondent-defendant No.1 instituted a civil suit No.734 of 24.12.1999/239 of 20.08.2002 captioned as *Karma Vs. Malkiat Singh* without impleading appellant-plaintiff No.1 as party to the said litigation despite having knowledge of the sale deeds executed by respondent-defendant No.2 in favour of appellant-plaintiff No.1 and that suit was decreed vide judgment and decree dated 12.11.2002. By that time, appellant-plaintiff No.1 had already exchanged the land in dispute with appellants-plaintiffs No.2 to 7, who were put in actual possession of the same. The suit was filed against respondent-defendant No.2 only, who did not care to contest the same as he had already sold the land in dispute and received the entire sale consideration. He did not appear to contest and was proceeded ex parte. The judgment and decree dated 12.11.2002 was obtained by Karam Singh by misrepresenting the fact that the sale was made by him in violation of the restriction imposed regarding the sale of the land to a non scheduled caste, concealing the fact that sale was made by him in favour of respondent-defendant No.2 was perfectly legal and valid as respondent-defendant No.2 Malkiat Singh also belonged to scheduled caste community. He also concealed the proceedings before SDM and DSP Kapurthala in the civil suit. On the strength of the decree in his favour,

respondent-defendant No.1 was threatening to interfere in the possession of appellant-plaintiff No.8 and 9 over the suit land which resulted in filing of the instant civil suit.

The suit was contested by respondent-defendant No.1, **who denied that he ever sold the land allotted to him to respondent-defendant No.2 Malkiat Singh.** The sale deeds dated 18.10.1994 and 26.10.1994 (sic 26.09.1994) were denied as having been forged. It was alleged that both the sale deeds were attested by Gurbachan Singh Lamberdar and Joginder Singh son of Natha Singh of village Nawan Thatta as marginal witnesses. Said Gurbachan Singh Lamberdar got prepared a forged agreement to sell dated 03.12.1986 pertaining to the suit land. On the basis of said agreement, Gurbachan Singh filed civil suit No.272 of 16.08.1989 seeking relief of injunction to restrain respondent-defendant No.1 from alienating the suit land, which was dismissed in default on 05.11.1990 by Sub Judge 1st Class, Kapurthala. Gurbachan Singh moved an application before the Court of Civil Judge (Senior Division), Kapurthala in execution of decree passed in civil suit No.83 of 13.11.1990 decided on 18.09.1992 by the Court of Additional Senior Sub Judge, Kapurthala titled as Gurbachan Singh Vs. Karma on 14.02.1997 for release of land bearing khasra No.14//18(8-0) and 23(8-0) from attachment, stating therein that he had received full and final payment of decretal amount. The land was released from attachment on 23.04.1997 but before that he got the sale deed of this land executed on 26.09.1994 and 18.10.1994. Gurbachan Singh also got pronote and receipt and a false agreement to sell in his name executed on 03.12.1986 and 17.07.1992 without consideration in order to grab the suit land. Gurbachan Singh being master-mind, managed Pichhora Singh son of Didar Singh and father-in-law of Mohinder Singh son of Sadha Singh to get the sale deeds dated 03.09.1997 and 04.09.1997 executed in favour of

appellant-plaintiff No.1 Baljinder Singh. This entire transaction was to cheat defendant-respondent No.1 Karam Singh. All the transactions between defendant No.2 and plaintiff No.1 and between plaintiff No.1 and plaintiffs No.2 to 7 and then between plaintiffs No.2 to 7 and plaintiffs No.8 and 9 are the result of fraud, illegal and void. He had no knowledge of the execution of the sale deed in favour of Malkiat Singh, respondent-defendant No.2 or by defendant No.2 in favour of appellant-plaintiff No.1. The sale deeds dated 03.09.1997 and 04.09.1997 were executed by Pichhora Singh, who impersonated as Malkiat Singh. The filing of suit by defendant No.1 against defendant No.2 titled as *Karma Vs. Malkiat Singh*, civil suit No.734 of 24.12.1999/239 of 20.08.2002 was admitted. Plaintiff No.1 had got no right, title or interest in the suit land at the time of filing of the said suit. It was denied that ex parte decree dated 12.11.2002 passed in the above referred suit was the result of misrepresentation and concealment of true facts. The said judgment and decree is binding on the plaintiffs and all the alienations made on the basis of sale deeds executed by defendant No.2 are illegal, null and void.

The pleadings of parties led to the framing of issues as follows:-

- (1) Whether the defendant (sic plaintiffs) No.8 and 9 are owners in possession of the suit land? OPP
- (2) Whether judgment and decree dated 12.11.2002 passed in civil suit No.734 of 24.12.1999 titled as *Karma Vs. Malkiat Singh* is illegal, null and void? OPP
- (3) Whether the plaintiff is (sic plaintiffs are) entitled to permanent injunction as prayed for? OPP
- (4) Whether defendant No.1 executed registered sale deed No.1946 dated 26.9.94 and sale deed No.2080 dated 18.10.94 in favour of defendant No.2? OPP
- (5) Whether defendant No.2 executed sale deeds dated 3.9.97 and

4.9.97 in favour of plaintiff No.1? OPP

- (6) Whether plaintiff no.1 has exchanged the land in favour of plaintiffs No.2 to 7? OPP
- (7) Whether plaintiffs No.2 to 7 have further exchanged the land in favour of plaintiffs No.8 and 9? OPP
- (8) Whether the suit is not maintainable in the present form? OPD
- (9) Whether the suit is bad for misjoinder of the necessary parties? OPD
- (10) Whether the sale deeds dated 18.10.94 and 26.09.94 are the result of fraud as alleged in para No.2 of the written statement? OPD
- (11) Whether the sale deeds are without consideration? OPD
- (12) Whether mutation of exchange bearing No.669 is illegal, null and void? OPD
- (13) Whether mutation No.559 and 560 are also illegal, null and void? OPD
- (14) Whether the sale deeds dated 3.9.97 and 4.9.97 is the result of fraud and misrepresentation? OPD
- (15) Whether the plaintiff has (sic plaintiffs have) no cause of action to file present suit? OPD
- (16) Whether the suit is not properly valued for the purpose of court fees and jurisdiction? OPD
- (17) Relief.

The suit was dismissed by Additional Civil Judge (Senior Division), Kapurthala with observations as follows:-

- (i) Undisputedly, the suit land stood allotted to the defendant No.1 Karam Singh on 24.1.1977 as per Section 4 of the Punjab Package Deal (Property Disposal) Act, 1974 being a scheduled caste person. On 31.03.1977 he paid the auction amount and was declared owner. On 22.3.1987 a Sale Certificate, copy of which is Ex.P16 on record stood issued to him. The allotment was conditional with the condition that defendant No.1 could not alienate the same for a period of 20 years from the date of

allotment to a person of any other caste, other than the scheduled caste.

- (ii) The plaintiffs have alleged the execution of sale deed dated 26.09.1994 and 18.10.1994 by defendant No.1 Karam Singh in favour of defendant No.2 Malkiat Singh, who is a member of scheduled caste but said Malkiat Singh was not examined to prove the purchase of suit land by him and that he belong to scheduled caste.
- (iii) Karam Singh defendant No.1 had disputed the photograph on the sale deed executed by Malkiat Singh as that of Pichhora Singh, who is in relation of Gurbachan Singh, father of plaintiff No.1.
- (iv) Caste certificate of Malkiat Singh was not produced or proved on record while leading evidence in affirmative. Caste certificate Ex.P7 produced while leading rebuttal evidence, was not admissible. This caste certificate did not pertain to Malkiat Singh @ Dadu son of Mukhtiar Singh, rather it pertains to Malkiat Singh son of Dadu Singh.
- (v) Even in the proceedings before the Sub Divisional Magistrate, Kapurthala, Malkiat Singh was not produced. In para 21 of the judgment, it was observed that 'if the land is allegedly sold by defendant no.1 to said Malkiat Singh then it does not make any difference as it has been thereafter alleged to be purchased by plaintiff No.1 from said defendant No.2 vide sale deeds dated 03.09.1997 Ex.P1 and 04.09.1997 Ex.P2. Since it would be the plaintiffs whose case will fail in case defendant No.2 Malkiat Singh is not produced before the court, therefore, the onus to prove and examine him before the court in order to ascertain the truth was solely on the plaintiffs, which the plaintiffs have miserably failed to discharge'.

- (vi) Plaintiff No.1 mentioned the name of his father as Bachan Singh while his father was Gurbachan Singh and he had not explained as to why he did not plead correct name of his father.
- (vii) Defendant No.2 Malkiat Singh was not present when sale deed dated 26.09.1994 and 18.10.1994 were executed in his favour and it was Sadha Singh PW2, who had thumb marked in place of Malkiat Singh.
- (viii) It was Gurbachan Singh, who remained in possession of the suit land throughout as his land surrounds the suit land on three sides and on fourth side, there is road. It was alleged that Malkiat Singh had given land on lease to Gurbachan Singh but no evidence was produced in this regard.
- (ix) There had been litigation between Gurbachan Singh and defendant No.1 Karam Singh over the money transactions. Gurbachan Singh had also filed civil suit No.272 dated 18.08.1999 against defendant No.1 Karam Singh seeking relief of permanent injunction. The suit land was also under attachment and warrant of its release from attachment was issued on 03.05.1997 in an execution filed by Gurbachan Singh and thereafter, the sale deeds dated 03.09.1997 and 04.09.1997 were got executed.
- (x) Gurbachan Singh had an eye over the suit land which was allotted to defendant No.1 a scheduled caste. In order to usurp the same, Gurbachan Singh hatched a conspiracy through execution of sale deed dated 26.09.1994 and 18.10.1994 from defendant No.1 in favour of Malkiat Singh defendant No.2.
- (xi) Plaintiffs failed to prove alienation of the suit land which had taken place on 26.09.1994 and 18.10.1994 as legal and valid as per the condition of the allotment of the suit land. Consequently, they were left with no right, title or interest with the suit land. Once the

transfer of land from defendant No.1 to defendant No.2 was illegal, any transfer made thereafter carries no value in the eyes of law. The sale deeds dated 03.09.1997 and 04.09.1997 were illegal and without **‘any value’**. Defendant No.1 Karam Singh failed to prove his plea that photograph on the aforesaid sale deeds was that of Pichhora Singh and not that of Malkiat Singh, as a result of which it could not be held that **said sale deeds were result of fraud and misrepresentation.**

The appeal filed by the appellants-plaintiffs was dismissed by Additional District Judge, Kapurthala.

I have heard learned counsel for the parties and have perused the record of the Courts below with their assistance.

The matter in dispute falls in a very narrow compass i.e. to determine as to whether the judgment and decree dated 12.11.2002 passed in civil suit No.734 of 24.12.1999/239 of 20.08.2002 titled *Karma Vs. Malkiat Singh* is binding on the rights of the plaintiffs.

Learned counsel for the appellants-plaintiffs has argued that judgment and decree dated 12.11.2002 is not binding on the appellants-plaintiffs or effect the sale deeds executed in their favour in the year 1997 by Malkiat Singh for the reasons; **firstly**, defendant No.1 Karam Singh despite being aware of the sale transactions, did not implead the plaintiffs in that suit; **secondly**, he did not challenge the sale deeds executed by Malkiat Singh in favour of plaintiff No.1; **thirdly**, learned Civil Judge while dismissing the suit, has observed in para 30 of the judgment that the impersonation of Malkiat Singh by one Pichhora Singh as alleged by defendant No.1 Karam Singh was not proved and it was specifically held that in the absence of said proof, the sale deeds were not the result of fraud and misrepresentation; **fourthly**, the

only argument which weighed before learned Addl. Civil Judge and first Appellate Court, was that the plaintiffs had not been able to prove that Malkiat Singh was a scheduled caste and the certificate placed on file as Ex.P7 did not relate to said Malkiat Singh.

In para 2 of the plaint, it was specifically pleaded that Malkiat Singh was a scheduled caste. Respondent-defendant No.1 Karam Singh, in his written statement, nowhere denied that Malkiat Singh was not belonging to scheduled caste. The mere assertion that he was not aware of the caste of Malkiat Singh, cannot be taken as denial of the plea raised by the appellants-plaintiffs. The statement of Baljinder Singh, appellant-plaintiff No.1, who appeared as PW1 that Malkiat Singh, respondent-defendant No.2 belonged to scheduled caste, was un rebutted. Gurbachan Singh PW3, father of plaintiff No.1 had also stated that Malkiat Singh belonged to scheduled caste and his statement was also un rebutted. Karam Singh, respondent-defendant No.1 appeared as DW1 and in his affidavit tendered in examination-in-chief, has admitted the execution of the sale deeds by him in favour of Malkiat Singh of village Sekhon. However, he has alleged that these sale deeds were got executed from him by Gurbachan Singh, Lamberdar, father of appellant-plaintiff No.1. He has nowhere stated that Malkiat Singh, in whose favour sale deed dated 26.09.1994 and 18.10.1994 were executed, was not a scheduled caste. Both the Courts below have dismissed the suit and appeal by taking into account irrelevant facts. It is not disputed that defendant No.1 could sell the land to another scheduled caste. The plea of the plaintiffs and the evidence produced that Malkiat Singh belonged to scheduled caste, was un rebutted. The mere fact that Malkiat Singh had chosen not to appear in support of case of the appellants-plaintiffs, is not material as he was left with no right, title or interest in the suit land, after having received the sale consideration. Though not

admitted but even if it be proved that the sale was made in violation of the terms of the allotment, the remedy available with the respondent-defendant No.1 was to approach the competent authority and seek the cancellation of the allotment. As a vendor of the suit land in favour of respondent-defendant No.2 for valuable consideration, he stood estopped from claiming that the sale deeds executed by him were bad in the eyes of law. He had approached the competent authorities, where his request seeking cancellation of the sale in favour of respondent-defendant No.2 Malkiat Singh was declined and then he filed the civil suit concealing all these facts. If the sale was made in violation of terms of allotment in that case, the allotment letter in favour of respondent-defendant No.1 was liable to be cancelled, as such, in no manner, he can claim the title of the suit land, particularly when the lower Court has specifically held that respondent-defendant No.1 has failed to prove that the sale deeds in favour of respondent-defendant No.2 were the result of fraud.

The judgment and decree dated 12.11.2002 is not operative against the appellants-plaintiffs; firstly, because they were not party to the suit; secondly, because the sale transactions prior to the filing of that suit, are not hit by the principle of lis pendens and thirdly, respondent-defendant No.1 has come up with no explanation as to why he had chosen not to implead the appellants-plaintiffs as party or to challenge the sale deeds in favour appellant-plaintiff No.1. The findings of the Courts below are not based on proper appreciation of facts and law on the point and deserve to be set aside.

Learned counsel for respondent-defendant No.1 has argued that the suit land was allotted to defendant No.1 being a scheduled caste under Section 4 of the Punjab Package Deal Properties (Disposal) Act, 1974 on the terms that he will not alienate the same for a period of twenty years from the date of issuance of allotment letter. The sale made by him in the year 1994

being before the expiry of twenty years from the date of issuance of allotment letter in the year 1974 was illegal, null and void. Respondent-defendant No.1 filed a petition before the competent authority for cancellation of the forged sale deeds, which was, however, dismissed and he was asked to pursue his remedy before the civil Court. He filed the civil suit titled as *Karma Vs. Malkiat Singh* raising plea that two sale deeds of the suit land have been executed in favour of Malkiat Singh, which were result of fraud and misrepresentation. Malkiat Singh did not appear in that suit and the sale deeds were held to be false, fictitious and result of misrepresentation and manipulation. Once the sale in favour of Malkiat Singh was set aside, all the subsequent sales made by Malkiat Singh have no effect on the rights of respondent-defendant No.1. The onus was on the appellants-plaintiffs to prove that Malkiat Singh belonged to scheduled caste but no documentary evidence has been produced in this regard. Both the Courts below have looked into all these aspects and have rightly reached the conclusion that respondent-defendant No.1 is owner of the suit land in view of judgment and decree dated 12.11.2002 passed in civil suit No.734 of 24.12.1999/239 of 20.08.2002.

The substantial questions of law which require determination in this appeal are:-

- (1) Whether judgment and decree dated 12.11.2002 passed in civil suit No.734 of 24.12.1999/239 of 20.08.2002 was binding on the sale transactions which had taken place prior to the filing of that suit?
- (2) Whether the above suit filed by Karma Singh @ Karma, respondent-defendant No.1 was barred in view of Section 16 of Punjab Package Deal Properties (Disposal), Act, 1974?
- (3) Whether the Courts below have travelled beyond the subject matter of the case and have ignored, material and vital facts while reaching the conclusion that the sale by respondent-defendant No.1 in favour of respondent-defendant No.2 was not legal and

valid?

The story of this case starts from the allotment of suit land in favour of respondent-defendant No.1 Karam Singh vide allotment letter dated 24.01.1977. This fact is not disputed that there was a term of allotment mentioned in sale certificate mark-DB that the allottee shall not alienate allotted land for a period of twenty years to any person other than a person belonging to scheduled caste.

It is not disputed that the suit land was sold to Malkiat Singh vide sale deed dated 26.09.1994 and 18.10.1994. Respondent-defendant No.1 filed a petition before Sub Divisional Magistrate, Kapurthala assailing these two sale deeds. The sale transactions were duly proved in the inquiry conducted by Sub Divisional Magistrate, Kapurthala. Malkiat Singh avoided to appear in those proceedings and it was observed by Sub Divisional Magistrate that Karam Singh failed to prove that the sale deeds were got executed from Karam Singh complainant by playing fraud with him. His petition seeking cancellation of the sale deeds, was dismissed.

Respondent-defendant No.1 Karam Singh filed civil suit No.734 of 24.12.1999/239 of 20.08.2002 again challenging the sale deed dated 26.09.1994 and 18.10.1994. In this suit, he did not implead the subsequent vendees of the suit land as party. Appellant-plaintiff No.1 Baljinder Singh had purchased land measuring 16 kanals vide sale deed dated 03.09.1997 and 16 kanals 13 marlas vide sale deed dated 04.09.1997 and the mutation of these sale transactions were sanctioned on 16.12.1997 i.e. much prior to filing of that civil suit. No explanation has come forth as to why Karma, respondent-defendant No.1 did not implead appellant-plaintiff No.1 as party in the suit filed by him in the year 1999 or challenged those sale transactions.

First question which arise for consideration is as to whether the sale of suit land by Malkiat Singh in favour of appellant-plaintiff No.1 is effected by the judgment and decree passed in civil suit No.734 of 24.12.1999/239 of 20.08.2002 filed by Karma. This sale being before filing of the suit, is not hit by the principle of lis pendens. In the instant suit, learned Additional Civil Judge has recorded a specific finding that the sale deeds alleged to have been executed by Malkiat Singh are not the result of fraud and misrepresentation. There is every possibility that Malkiat Singh, who had washed off his hands after sale of the suit land in favour of appellant-plaintiff No.1, may have colluded with respondent-defendant No.1 or had chosen not appear in any litigation, which paved way for respondent-defendant No.1 to challenge the sale deeds executed by him in favour of Malkiat Singh.

Perusal of judgment and decree dated 12.11.2002 shows that the plea raised by defendant No.1 in the instant suit that he never saw defendant No.2 or was not aware of his caste, is false, hollow and erroneous. In that civil suit (civil suit No.734 of 24.12.1999/239 of 20.08.2002), he had specifically pleaded that he went to the village of Malkiat Singh and requested him to admit his claim but he refused. This shows that before the year 1999, respondent-defendant No.1 came in contact with Malkiat Singh. He had reached Malkiat Singh after making inquiries. In that suit, he had never alleged that Malkiat Singh was not a scheduled caste, as such, the sale deeds in his favour were bad being in violation of terms of allotment. Perusal of the order passed by Sub Divisional Magistrate, Kapurthala Ex.P3 shows that even before him no plea was raised that Malkiat Singh was not a scheduled caste. In this suit, while filing written statement, respondent-defendant No.1 had avoided to come up with specific denial or raise a plea that Malkiat Singh was not a scheduled caste. The plea raised by appellants-plaintiffs in the plaint and the

statement of plaintiff No.1 Baljinder Singh and his father Gurbachan Singh that Malkiat Singh was a scheduled caste, had gone unrebutted. Moreover, it was respondent No.1 who had challenged the sale deed executed in favour of Malkiat Singh, as such, onus was on him to prove that Malkiat Singh was not Scheduled caste and he executed the sale deed in violation of terms of allotment.

Both the Courts below have laid much stress on the fact that Malkiat Singh was not examined by the appellants-plaintiffs in support of their case. While making such observations, the Courts below have failed to take note of the fact that during the inquiry before Sub Divisional Magistrate, Kapurthala, respondent-defendant No.1 Karma was given opportunity to produce Malkiat Singh but he could not produce him. Malkiat Singh is a person, who at this stage, had no concern with the suit land. His examination and non-examination by either party was not relevant in the facts and circumstances of this case. A person, who has no right, title or interest in the subject matter of the suit, if had not appeared as a witness in that case, no adverse inference can be drawn on this score against either party. Both the Courts below have given unnecessary and undue importance to this fact while recording their finding against the appellants-plaintiffs. Even if, Malkiat Singh had appeared either in favour of appellants-plaintiffs or in favour of respondent-defendant No.1, it would not have made much difference for either party and in the same manner, his non-appearance would not affect the case of appellants-plaintiffs, in any manner.

On behalf of respondent No.1, it was emphasised that the sale deed dated 26.09.1994 and 18.10.1994 were executed in violation of the terms of allotments, which barred respondent-defendant No.1 from alienating the land allotted to him. The above sale deeds have not been held to be the result

of fraud or misrepresentation. Even if, for the sake of arguments, it be believed that Malkiat Singh is not proved to be a scheduled caste, the question which arises for consideration is as to whether the sale by respondent-defendant No.1 in favour of Malkiat Singh becomes void only on this ground that he had executed the sale deeds of the allotted land before the expiry of twenty years. A violator of a term cannot be awarded any benefit for his wrong. Respondent-defendant No.1 being himself a violator, cannot challenge his act by terming the same in violative of the terms of allotment of land to him. This may have certainly led to cancellation of allotment of the land in favour of respondent-defendant No.1 by the authorities under the Punjab Package Deal Properties (Disposal) Act, 1974 and the concerned authorities while cancelling the allotment could proceed against the transferee and the further alienations. Without any substance in the plea of respondent No.1 and in the absence of any cogent and convincing evidence, the Courts below have tried to give the benefit to an alleged wrong doer for his wrongful act without reaching this conclusion that the sale deeds in favour of Malkiat Singh respondent-defendant No.2 was result of fraud and misrepresentation.

Section 7 of Punjab Package Deal Properties (Disposal) Act, 1976 authorises the authorities i.e. Tehsildar (Sales) or Naib Tehsildar (Sales) under the Act to cancel any transfer under which any package deal property is occupied or held by a person. Section 8 of this Act provides for appeal to the Sales Commissioner against an order passed by Tehsildar (Sales) or Naib Tehsildar (Sales) and further appeal against the order of Sales Commissioner can be filed under Section 9 of the Act to the Chief Sales Commissioner. The above provisions are to secure the transfer/lease of the package deal property. Section 16 of the Act provides finality to the order passed by any officer or authority under the Act and also bars the jurisdiction of the Civil Court to

entertain any suit or proceeding in respect of any matter which the State Government or any officer or authority appointed under this Act is empowered by or under this Act to determine.

The sale certificate dated 27.03.1987 incorporates a specific term that in the event of sale of land within a period of 20 years from the date of purchase, the transfer of land in favour of the auction purchaser shall be cancelled and land shall be taken back from him. Sub Divisional Magistrate, Kapurthala while passing the order dated 25.05.1999 found the sale in favour of Malkiat Singh as valid and that is why no further action was initiated for cancellation of the allotment of land in favour of respondent No.1. Rule 6(8) of the Punjab Package Deal Properties (Disposal) Rules, 1976 provides as follows:-

“6(8) Bar on the alienation of the land purchased in restricted auction.—(i) Where any land has been sold in restricted auction, the auction purchaser shall not be entitled to lease, transfer, sell, mortgage with possession, or otherwise alienate or part with the land wholly or partly, so purchased, in any manner, in favour of a person, who is not a member of the Scheduled Castes or Backward Classes for a period of twenty years; provided that the land may be pledged in favour of a Government or Semi Government, Corporation, or Cooperative financing institution, for securing loan for effecting improvements on the said land.

(ii) An auction purchaser in restricted auction shall cultivate the land so purchased himself or through any member of the Scheduled Castes only.

(iii) If an auction purchaser in restricted auction violates any of the conditions mentioned in clause (i) and (ii) above, the Tehsildar (Sales) or Naib Tehsildar (Sales) shall be competent to cancel the sale, forfeit the amount already paid, and resume the land, after giving due notice to him.”

As is clear from the terms of sale letter and the provisions of the above Rule, in the event of sale of land by respondent No.1 before the expiry of 20 years entails the consequences of cancellation of the sale and resuming the land. As is clear from the above discussion the sale of land by respondent No.1 in favour of Malkiat Singh did not suffer from any illegality and he stood debarred from challenging that sale alleging same in violation of the terms of the allotment.

The Courts below have given much importance to the fact that the certificate of Malkiat Singh showing him as belonging to Scheduled Caste had some defect and cannot be looked into to reach a conclusion that Malkiat Singh was a Scheduled Caste. This, however, appears to have escaped the attention of Courts below that the pleadings and evidence produced by the appellants-plaintiffs in this regard is un rebutted and respondent-defendant No.1 while appearing as witness, has not even alleged that Malkiat Singh was not a scheduled caste. Regarding the photograph on the sale deeds and impersonation of Malkiat Singh by one Pichhora Singh, learned Civil Judge has recorded specific finding that respondent-defendant No.1 has failed to prove this fact. The sale deeds in favour of appellant-plaintiff No.1 were registered sale deeds, the execution of which has not been denied by defendant No.2 Malkiat Singh. Respondent-defendant No.1 has not disputed the execution of these sale deeds or had any locus standi to do so. His only concern was with the sale deeds in favour of Malkiat Singh, which were held to be not result of fraud and misrepresentation. Even in civil suit No.734 of 24.12.1999/239 of 20.08.2002 filed by respondent-defendant No.1 a plea was raised qua the sale deeds in favour of Malkiat Singh which find mention in para 6 of the judgment as follows:-

“6. The defendant got thumb impression marked on the said sale deeds as a result of fraud, misrepresentation and manipulation in connivance with Deed Writer Jaswinder Singh and witnesses Gurbachan Singh of village Majorwala and Joginder Singh son of Natha Singh of village Nawan Thatt District Kapurthala. The registered sale deeds were written on 13.9.1994 and were got registered from Sub Registrar, Kapurthala on 13.9.1994 and 18.10.1994.”

While appearing as DW1, respondent-defendant No.1 has stated as follows:-

“That Gurbachan Singh in order to write the compromise on the previous agreements and Pronote and decree of Pronotes got the thumb impression on the blank stamp papers on 13.9.94 and in connivance with deed writer and revenue official, Sadha Singh and Joginder Singh and others and he himself signed as Numberdar got attested the sale deeds on 26.9.94 and 18.10.94 fraudulently without consideration but the mutation of the above said sale deed was not got sanctioned till the completion of 20 years of bar on alienation.”

He has categorically admitted in his cross-examination that sale deeds Ex.P3 and Ex.P4 executed by him in favour of Malkiat Singh were bearing his thumb impressions, but alleged that these were obtained by Gurbachan Singh. This fact that the name of father of appellant-plaintiff No.1 was given as Bachan Singh, whereas it was Gurbachan Singh got undue attention of Courts below. Identity of appellant-plaintiff No.1 is not disputed. Appellant-plaintiff No.1 has not denied the fact that his father is Gurbachan Singh. Respondent-defendant No.1 was alleging his money transactions with Gurbachan Singh and has also stated that he gave his land for cultivation to

Gurbachan Singh and there had been litigation between Gurbachan Singh and respondent-defendant No.1, as such, both the parties were well-known to each other. In these circumstances, the fact as to whether the father name of appellant-plaintiff No.1 is Bachan Singh or Gurbachan Singh, is totally insignificant and irrelevant.

Learned counsel for the respondent-defendant No.1 has argued that when a transfer of land is against the public policy, the plea of bona fide purchaser cannot be raised, particularly when the seller had no authority to alienate the land allotted to him. The purpose of allotment of land to respondent-defendant No.1 was to settle a scheduled caste and Gurbachan Singh, who had his land on three sides of the allotted land, in order to grab the same, firstly got the sale deeds of suit land executed in favour of Malkiat Singh and then purchased the same from Malkiat Singh. He has relied upon the observations in case of *Jit Singh etc. Vs. Piara 2003(3) RCR (Civil) 133*; and *Ajit Singh Vs. Gurcharan Singh and others 2009(1) RCR (Civil) 154*.

I have gone through the above citations and find that the observations made therein are not applicable to the facts and circumstances of the present case. In case of *Jit Singh etc. Vs. Piara* (supra), the sale deed was executed by power of attorney holder of the allottee on 11.01.1993 despite the fact that his power of attorney had already been cancelled on 24.12.1992. In case of *Ajit Singh Vs. Gurcharan Singh and others* (supra), the relief of specific performance of agreement to sell entered into by allottee was declined as the sale of *Nazool* land was conditional that it could not be further alienated before expiry of ten years. A note to this effect was given in the jamabandi and this fact was in the specific knowledge of the vendee who had seen the allotment letter. Under these circumstances, relief of specific performance of the agreement was declined.

In the facts and circumstances discussed above, the violation of any terms of allotment is not proved. Respondent-defendant No.1 has not been able to make out that any of the sale transactions of suit land including those in favour of Malkiat Singh were not in accordance with the terms of allotment of land in his favour. The judgment and decree dated 12.11.2002 passed in civil suit No.734 of 24.12.1999/239 of 20.08.2002 is not binding on the rights of appellants-plaintiffs as they were not party to it and the sale transaction in favour of appellant-plaintiff No.1 was not hit by the principle of '*lis pendens*'. Respondent-defendant No.1 has utterly failed to prove that the sale of suit land by him in favour of Malkiat Singh and by Malkiat Singh in favour of appellant-plaintiff No.1 was result of fraud, misrepresentation etc.

As a sequel of my discussion above, judgments of both the Courts below are perverse and against the facts of the case and call for interference. I am very cautious of the fact that usually this Court while exercising the appellate powers under Section 100 of Code of Civil Procedure avoid interfering with the concurrent finding of facts recorded by the Courts below. However, when the findings of facts are based on misinterpretation or wrong interpretation of law on the point, this Court cannot be a moot spectator. In case of ***Municipal Committee, Hoshiarpur Vs. Punjab State Electricity Board & Ors*** 2010(13) SCC 216, while dealing with scope of Section 103 Civil Procedure Code, Hon'ble Supreme Court has observed as follows:-

"23. There is no prohibition on entertaining a second appeal even on a question of fact provided the Court is satisfied that the findings of fact recorded by the courts below stood vitiated by non-consideration of relevant evidence or by showing an erroneous approach to the matter i.e. that the findings of fact are found to be perverse. But the High Court cannot interfere with the concurrent findings of

fact in a routine and casual manner by substituting its subjective satisfaction in place of that of the lower courts. **(Vide: Jagdish Singh v. Natthu Singh, AIR 1992 SC 1604; Karnataka Board of Wakf v. Anjuman-E-Ismaail Madris-Un-Niswan, 1999(3) R.C.R. (Civil) 639; and Dinesh Kumar v. Yusuf Ali, 2010(3) R.C.R.(Civil) 243: 2010 (1) R.C.R. (Rent) 543).**

24. If a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the finding is rendered infirm in the eyes of law. If the findings of the Court are based on no evidence or evidence which is thoroughly unreliable or evidence that suffers from the vice of procedural irregularity or the findings are such that no reasonable person would have arrived at those findings, then the findings may be said to be perverse. Further if the findings are either ipse dixit of the Court or based on conjecture and surmises, the judgment suffers from the additional infirmity of non-application of mind and thus, stands vitiated. **(Vide: Bharatha Matha & Anr. v. R. Vijaya Renganathan & Ors., 2010(3) R.C.R. (Civil) 252)."**

In this case, I have following reasons to reach the conclusion that the findings of Courts below are not based on proper appreciation of law and facts on the point:-

- (i) The Court of Additional Civil Judge (Senior Division), Kapurthala discarded the plea of respondent-defendant No.1 that the sale deed dated 03.09.1997 and 04.09.1997 were not the result of fraud and misrepresentation. Still the onus was wrongly placed on the appellants-plaintiffs to prove that respondent-defendant No.1 Karam Singh had rightly executed the sale deed in favour of Malkiat Singh.
- (ii) Non-appearance of Malkiat Singh, who was left with no interest in the suit land, was wrongly taken as a circumstance against the

appellants-plaintiffs ignoring the fact that in the proceedings before the Sub Divisional Magistrate, respondent-defendant No.1 was given ample opportunities to produce said Malkiat Singh but he could not produce him. It was respondent No.1, who was challenging the sale deed executed by him in favour of Malkiat Singh, as such, onus was on him to prove this fact, which was wrongly shifted on appellants.

- (iii) Both the Courts below travelled much beyond the subject matter of the case, which was 'as to whether the judgment and decree passed in the civil suit No.734 of 24.12.1999/239 of 20.08.2002 was binding on the plaintiffs-appellants. In that suit, appellants-plaintiffs despite having pre-existing rights in the suit land to the knowledge of respondent-defendant No.1 were not impleaded as party. Both the Courts below did not evaluate this fact.
- (iv) Both the Courts below did not look into or appreciated this fact that sale in favour of appellant-plaintiff No.1 by Malkiat Singh vendee of Karam Singh, respondent-defendant No.1 was before this suit filed by respondent-defendant No.1, as such, was not hit by the principle of '*lis pendens*'. The judgment and decree passed in favour of Malkiat Singh, as such, in no manner, affected the sale in favour of appellant-plaintiff No.1.
- (v) Respondent-defendant No.1 Karam Singh had come up with no explanation for not impleading appellant-plaintiff No.1 as party in the civil suit No.734 of 24.12.1999/239 of 20.08.2002 despite the fact that he was aware of the sale transaction in his favour and this fact was specifically discussed by the Sub Divisional Magistrate while disposing of his complaint vide order dated 25.05.1999 (Ex.P3). Respondent-defendant No.1 has never challenged the sale deed executed by him in favour of Malkiat Singh on the ground that the sale was in violation of the terms of allotment or Malkiat Singh was not a Scheduled Caste. This plea is just an after-thought. In case, respondent-defendant No.1 had to challenge the sale deeds on the above ground, the onus was on him to prove that Malkiat Singh did not belong to Scheduled Caste category.

This appeal, as such, has merits and the same is accepted. The judgment and decree passed by the Courts below are set aside and the suit of the appellants-plaintiffs for declaration is decreed with costs throughout to the effect that appellants-plaintiffs No.8 and 9 are the owners in possession of the suit land as fully described in the head note of the plaint and the judgment and decree dated 12.11.2002 passed in civil suit No.734 of 24.12.1999/239 of 20.08.2002 titled as *Karma Vs. Malkiat Singh* is not binding on the rights of the appellants-plaintiffs and respondent-defendant No.1 is restrained from taking possession of the suit land from the plaintiffs under the above decree in his favour.

May 06, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE