

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 4203 of 2013 (O&M)
Date of decision: February 04, 2015

Gurdev Kaur

.....Appellant

versus

Sohan Lal & others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Arvind Kashyap, Advocate
for the appellant.

JASPAL SINGH, J

Unsuccessful appellant/plaintiff has preferred instant regular second appeal feeling dissatisfied against judgment and decree dated January 11, 2013 passed by Additional District Judge, SAS Nagar (Mohali) confirming the judgment and decree dated December 13, 2010 of learned trial Court passed in civil suit No. 121 dated 21.03.2002/29.04.2009 captioned as Jaimal Singh (since deceased) vs. Sohan Lal @ Gholia and others whereby, suit for possession preferred by him, was dismissed.

2. The case set up by the appellant-plaintiff before learned trial Court is that he and Fateh Singh @ Jagir Singh had been residing together. However, a portion of house occupied by Fateh Singh @ Jagir Singh, who was an old man of 80 years was let out to

Sohan Lal @ Gholi-respondent No.1 several years back who started residing therein. Fateh Singh @ Jagir Singh breathed his last on November 09, 2001 and after his demise respondent No.1 alleging himself to be the son of Fateh Singh @ Jagir Singh got mutation of inheritance sanctioned in his favour, which is otherwise illegal, null and void. In fact, respondent No.1 is not the son of Fateh Singh @ Jagir Singh rather he is the natural son of one Bant Ram son of Tara Singh resident of Village Lachroo Kalan, Tehsil Ghanaur, District Patiala.

3. It has further been averred that appellant/plaintiff being legal heir of Fateh Singh @ Jagir Singh was entitled to possession of properties which have been illegally occupied by respondent No.1. By taking an advantage of mental condition of Fateh Singh @ Jagir Singh, Sohan Lal-respondent No.1 in connivance with respondents No.2 to 8 got executed two sale deeds dated September 21, 2001 and October 15, 2001. Both the sale deeds are forged and fictitious documents and are without any consideration. The value of land in subject matter of above-referred sale deeds is not less than ₹40,00,000/-. Both the sale deeds were got executed by respondent No.1 just within two months prior to his death by showing consideration to be less than ₹20,00,000/-. Not only this respondent No.1 also got executed a will dated August 01, 2001 in his favour claiming himself to be the son of Fateh Singh @ Jagir Singh.

4. All these averments were categorically denied by learned counsel for respondent No.1 alleging that Fateh Singh @ Jagir Singh

was his natural father and had been residing with him. He performed his last rites. Due to services rendered by him towards his father, his father executed a valid and legal will dated August 01, 2001. The sale deeds executed by Fateh Singh @ Jagir Singh were for valuable consideration and in his sound mind. The sale consideration was paid to Fateh Singh @ Jagir Singh, which was deposited in his bank account as well as in the account of respondent No.1. Accordingly, prayed for dismissal of suit.

5. On going through the pleadings of parties following issues were framed:-

1. Whether the plaintiff is entitled to the possession as prayed for? OPP.
2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
3. Relief.

From the pleadings of the parties additional issues were framed on October 16, 2010

- 3A. Whether sale deed dated 21.09.2001 and 15.10.2001 are result of fraud and without consideration? OPP
 - 3B. Whether Jagir Singh @ Fateh Singh executed valid will dated 01.08.2010 in favour of Sohan Lal? OPD
6. After analyzing the evidence and hearing the learned counsel for the parties, the suit was decreed in favour of plaintiff by holding that plaintiff is not the owner of property in dispute and as such he is not entitled to decree for possession as well as permanent

injunction vide impugned judgment and decree dated December 13, 2010. An appeal preferred by plaintiff before lower Appellate Court impugning the judgment and decree dated December 13, 2010 also met with the same fate and was dismissed vide judgment and decree dated January 11, 2013 confirming the judgment and decree passed by learned trial Court.

7. Aggrieved against the judgments and decrees passed by both the courts below, instant regular second appeal has been preferred by appellant/plaintiff.

8. Learned counsel for the appellant has assailed the impugned judgments and decrees on the ground that Jaimal Singh is the brother of deceased Fateh Singh @ Jagir Singh who died issueless and wife less. After his demise, appellant being brother and natural heir has become the owner of property in dispute and is entitled to possession thereof. There is no cogent and convincing evidence adduced by appellant/plaintiff that respondent No.1/defendant No.1-Sohan Lal @ Ghola is not the natural heir of Fateh Singh @ Jagir Singh. Learned trial Court has wrongly relied upon enteries in voter list, ration card and electricity bills to arrive at a fact of paternity. The sanction of mutation in favour of Sohan Lal @ Ghola-respondent No.1 after the demise of Fateh Singh @ Jagir Singh does not prove that respondent No.1 was son of Fateh Singh @ Jagir Singh.

9. It has further been contended by learned counsel for the appellant that both the courts below have also failed to appreciate the

fact that sale deeds were executed by Fateh Singh @ Jagir Singh on September 21, 2001 and October 15, 2001 whereas Fateh Singh @ Jagir Singh was taken away by nature on November 09, 2001 i.e. within two months. He was not keeping good mental faculty and was about 80 years. The sale deeds are the result of question and pressure exercised by respondent No.1 upon Fateh Singh @ Jagir Singh. Sale deed were also executed by respondent No.1 in his favour in connivance with revenue Patwari as well as witnesses of the sale deeds. Similarly, will dated August 01, 2001 alleged to be executed by Fateh Singh @ Jagir Singh in favour of respondent No.1 is surrounded by number of suspicious circumstances which creates serious doubts on the execution of Will. As per submissions made by learned counsel for the appellant following questions of law are involved:

- i) Whether the Id. Courts below misread the evidence on record in arriving at the finding that defendant No.1 Sohan Lal was son of Fateh Singh @ Jagir Singh?
- ii) Whether the fact that Fateh Singh was old and died on 09.11.2001 shortly after the execution of sale deeds and Will prove that the said documents were executed under the influence of defendant No.1 and not out of his free will?
- iii) Whether the paternity of a person can be proved by mere entries in the ration card and revenue record when there is no other cogent evidence to prove the same?

10. While concluding his arguments learned counsel for the

appellant has submitted that since respondent No.1 has not proved the natural son of Fateh Singh @ Jagir Singh and sale deeds as well as Will were got executed by him at the fag end of life of Fateh Singh @ Jagir Singh, the same are not sustainable in the eyes of law and findings recorded in this regard as well as impugned judgments and decrees deserve to be set aside. There are substantial questions of law which requires to be considered by this Court and are sufficient for the admission of instant appeal.

11. Having heard learned counsel for the appellant and having scanned the impugned judgments and decrees of both the courts below. This court is of the considered view that there is no infirmity or illegality either in the findings recorded by trial Court as well as by lower Appellate Court. As far as contention of learned counsel for the appellant that Sohan Lal-respondent No.1 is not the son of Fateh Singh @ Jagir Singh is concerned, the same is without any substance. The mere assertion in this regard raised by appellant is not sufficient especially in the circumstances that he has failed to bring on record any documentary evidence in this regard whereas, respondent No.1 has placed and proved on record various documents in which he has been shown to be the son of deceased Fateh Singh @ Jagir Singh. Besides, categoric admission of PW-1 in this regard Ex.D9, which is photocopy of voter list of village Manauli pertaining to the year 1998 in which Sohan Lal-respondent No.1 has been recorded to be the son of Fateh Singh @ Jagir Singh. To the similar effect is the ration card Ex.D7 issued on September 21, 1992

in which the name of respondent No.1 stands incorporated at serial No.3. Not only this Ex.D8, electricity bill also reflects Sohan Lal-respondent No.1 to be the son of Fateh Singh @ Jagir Singh.

12. Apart from these documentary evidence it has been categorically admitted by Gurdev Kaur who was impleaded as legal heir of Jaimal Singh-plaintiff after his demise appeared in the witness box as PW-1, when she was subjected to cross-examination that Fateh Singh @ Jagir Singh was cremated by Sohan Lal-respondent No.1 and his ashes and last remains were also immersed by Sohan Lal-respondent No.1 at Kiratpur Sahib and bhog ceremony was also performed by him. There is no rebuttal to the above-referred oral as well as documentary evidence.

13. As far as sale deeds i.e. Ex.D5 and D6 which are stated to be fake and fictitious documents and without consideration are concerned there is no evidence at all. Both the sale deeds are registered documents. There is also nothing on record to suggest that Fateh Singh @ Jagir Singh was not enjoying good health before his death or that sale deeds are without consideration. There is also no medical evidence from which it can be established that Fateh Singh @ Jagir Singh was not of sound and disposing mind or there was some loss of his mental faculties on account of old age. It is an undisputed fact that Fateh Singh @ Jagir Singh was taken away by the nature on November 09, 2001 i.e. about two months after execution of sale deeds. But from this simple fact it cannot be said that sale deeds under challenge are result of fraud, misappreciation

or without consideration.

14. As far as the sale consideration in the sale deeds Ex.D5 and D6 is concerned, vide sale deed Ex.D5 land measuring 15 bighas was purchased by Fateh Singh @ Jagir Singh for sale consideration of ₹15,62,500/- out of which ₹10,58,500/- was already received by Fateh Singh @ Jagir Singh and balance amount of ₹5,04,000/- was received by vendor on the date of execution of sale deed. Had there been any such dispute with regard to sale consideration, Fateh Singh @ Jagir Singh must have raised dispute at that time. Sale deed Ex.D6 pertains to land measuring 4 bighas 12 biswas for consideration of ₹4,79,500/- and the said amount stands already transferred in the account of Fateh Singh @ Jagir Singh. To prove the passing of consideration various documents i.e. Ex.D10 to D21 including statements of account of Sohan Lal-respondent No.1 as well as that of Fateh Singh @ Jagir Singh have been placed and proved on record.

15. Moreover, appellant has nothing to do with sale deeds as Fateh Singh @ Jagir Singh was an absolute owner of property subject matter of sale deeds Ex.D5 and D6 and appellant has failed to prove that Sohan Lal-respondent No.1 is not the son of Fateh Singh @ Jagir Singh.

16. Now coming to the Will dated August 01, 2001, no doubt it is an unregistered document but on this score alone, Will cannot be discarded or disbelieved as it is not the requirement of law. There is no material suspicious circumstance could be brought to the notice of

this Court during course of arguments by learned counsel for the appellant/plaintiff. Even otherwise, each and every aspect has been elaborately discussed not only by learned trial Court but also by lower Appellate Court.

17. Thus taking the case of appellant/plaintiff from any of the angles, this Court does not find any infirmity or illegality in the impugned judgments and decrees. The net result of afore-said discussions is that there is no substantial question of law involved in this case especially, in view of concurrent findings arrived at by both the courts below.

18. Instant appeal being devoid of merit stands dismissed whereby impugned judgments and decrees passed by both the courts below are upheld.

(JASPAL SINGH)
JUDGE

February 04, 2015
sham

- 1. Whether the Reporters of the Local papers may be allowed to see the judgment? Yes**
- 2. To be referred to the Reporters or? Yes**
- 3. Whether the judgment should be reported in the digest? Yes**