

RSA Nos. 4239 of 2013 and connected appeals

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 7.12.2015

RSA No. 4239 of 2013 (O/M)

Dr. G.S. Gill and another

..... Appellants

Versus

State of Punjab and another

..... Respondents

RSA No. 4618 of 2013 (O/M)

Dr. G.S. Gill and another

..... Appellants

Versus

State of Punjab and another

..... Respondents

RSA No. 4801 of 2013 (O/M)

Gurbir Singh Gill and another

..... Appellants

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ashish Aggarwal, Senior Advocate, with,
Ms. Neetu Gupta and Mr. Kulwant Singh, Advocates,
for the appellants in all the cases.
Mr. T.N. Sarup, Additional A.G. Punjab,
for respondent-State in all the cases.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not. Yes
3. Whether the judgment should be reported in the digest ? Yes

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KULDIP SINGH, J.

By this judgment, I will dispose of RSA Nos. 4239 of
2013 and 4618 of 2013, titled as Dr. G.S. Gill and another Versus

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State of Punjab and another, and RSA No. 4801 of 2013, titled as Gurbir Singh and another Versus State of Punjab and another, arising out of three judgments and decrees dated 20.11.2012, passed by the learned Civil Judge (Junior Division), Jalandhar.

The present appellants-plaintiffs had filed three different civil suits. The first suit bearing Civil Suit No. 3030126A of 2010 was filed by Dr. G.S. Gill and Jasbir Kaur wife of Dr. G.S. Gill under Section 77 of the Indian Registration Act, directing defendant No. 1- Deputy Commissioner-cum-Registrar, Jalandhar, to register the lease deed dated 23.7.2007, duly executed by defendant No. 2 Mahant Piara Dass, regarding land measuring 15 acres 7 kanals (chahi), fully detailed in the plaint, situated within the revenue estate of village Daulatpur, Tehsil and District Jalandhar. The declaration was also sought to the effect that the plaintiffs are lessee and defendant No. 2 is lessor, on the basis of lease deed dated 23.7.2007, duly executed by defendant No. 2 Mahant Piara Dass in favour of plaintiffs regarding the said land. Consequential relief of decree of permanent injunction was also sought.

It was stated that defendant No. 2 had executed a lease deed dated 23.7.2007, in favour of the plaintiffs, regarding land measuring 15 acres 7 kanals (chahi), situated within the revenue estate of village Daulatpur, Tehsil and District Jalandhar, for a period

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of 99 years. The Joint Sub Registrar, Adampur, refused to register the lease deed, vide order dated 25.7.2007. The appeal filed by the plaintiffs was dismissed by the Deputy Commissioner-cum-Registrar, Jalandhar, on 19.3.2010.

The second suit bearing Civil Suit No. 3030127A of 2010 was also filed by Dr. G.S. Gill and Jasbir Kaur, regarding another lease deed dated 23.7.2007, executed by defendant No. 2, regarding land 21 acres 7 kanals 17 marlas (chahi), situated within the revenue estate of village Daulatpur, Tehsil and District Jalandhar, on the basis of similar facts.

The third suit bearing Civil Suit number 3030126B of 2010 was filed by Gurbir Singh Gill and Gurchetan Singh Gill, sons of Dr. G.S. Gill, claiming that defendant No. 2-Mahant Piara Dass had executed a sale deed on 23.7.2007 for land measuring 190 kanals 10 marlas (chahi) and 6 kanals 2 marlas land, situated within the estate of village Daulatpur, Tehsil and District Jalandhar. Same facts were pleaded in the said suit.

In all the suits, defendant No. 2-Mahant Piara Dass appeared through counsel and filed written statement, admitting the claim of the plaintiffs in toto and submitted that he (defendant No. 2) has no objection if the suits of the plaintiffs are decreed and lease deeds in question are ordered to be registered.

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However, the State contested all the three suits on the ground that ownership of the land belongs to Samadh Baba Maru Dass and Mahant Piara Dass is only managing the affairs of Samadh Baba Maru Dass and he is not competent to alienate or lease out the land in question. An objection was also taken that no notice was served upon defendant No. 1 under Section 80 of Code of Civil Procedure, 1908 (in short 'CPC') that. The orders dated 25.7.2007 and 19.3.2010, passed by the Joint Sub Registrar, Adampur and the Deputy Commissioner-cum-Registrar, Jalandhar, respectively, were defended as lawful orders.

The lower Court, after going through the various provisions of the Registration Act and the Limitation Act, held that the suits are within limitation and granted the decrees to the effect that defendant No. 1 is directed to register the sale deeds dated 23.7.2007 as the order dated 25.7.2007, passed by the Joint Sub Registrar, Adampur and order dated 19.3.2010, passed by the Deputy Commissioner-cum-Registrar, Jalandhar, are found to be illegal and not according to the law. The declaration was also granted to the effect that the plaintiffs are the lessees and defendant No. 2 is the lessor, subject to registration of lease deed with all just exceptions. Defendant No. 2 was further restrained from alienating, further leasing out, changing the nature and creating any sort of

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charge over the land in question.

Aggrieved by the said judgments and decrees of the lower Court, the State of Punjab through Deputy Commissioner, Jalandhar, as well as Dera Samadh Baba Maru Dass through Mahant Piara Dass are stated to have filed the appeal. (However, the perusal of the record shows that it was filed only by the Government Pleader on behalf of the State of Punjab only). The learned District Judge, Jalandhar, vide separate judgments and decrees dated 12.7.2013, allowed the appeals and set aside the judgments and decrees dated 20.11.2012, passed by the learned Civil Judge (Junior Division), Jalandhar and dismissed all the suits with costs. Against the said judgments and decrees, three separate regular second appeals have been filed by the plaintiff/appellants.

At the very outset, the learned senior counsel for the appellants has argued that he restricts his prayer only for registration of the sale deeds under Section 77 of the Registration Act, 1908. The learned senior counsel has further argued that once the lease deed is executed and is admitted by the executant, the registering authority has no reason to refuse the registration of the same. It has been further argued that the learned District Judge, Jalandhar, went beyond the case of the parties to hold that Mahant Piara Dass had no power to alienate the property, except in case of

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legal necessity or for the benefit of the estate. It was observed by the learned District Judge, Jalandhar, that Mahant Piara Dass was not competent to execute the lease deeds of the Samadh property for 99 years. Therefore, on this ground, the judgments and decrees of the lower Court were reversed.

I have heard the learned senior counsel for the appellants, learned Additional Advocate General, Punjab, and have also examined the lower Court record.

It is contended by the learned senior counsel for the appellants that it is not a case where the lease deeds have been challenged by somebody and it is required to determine whether Mahant Piara Dass was competent to execute the sale deeds or not. Here the lease deeds were executed and not disputed by the executant. The lease deeds have not been challenged by any of the devotees of the Samadh and, therefore, the findings of the learned District Judge, Jalandhar, are beyond the pleadings of the parties and are un-necessary. At the time of registration of the lease deeds, the plaintiffs are not required to prove whether the property has been alienated for legal necessity or for the benefit of estate. It is further argued that in all the cases, the consideration amount was paid through cheques. In case of sale deed for 15 kanals 7 marlas, earnest money of Rs. 20 lacs were paid, vide two cheques bearing

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No. 087026 and 233549, dated 10.6.2005 and Rs. 36 lacs were paid through different cheques, all drawn on Bank of Baroda, Adarsh Nagar, Jalandhar. Similarly, regarding lease of lands measuring 190 kanals 10 marlas and 6 kanals and 2 marlas, Rs. 1.38 crores and Rs. 20 lacs were paid through two cheques, drawn on Bank of Baroda, Adarsh Nagar, Jalandhar, as earnest money and Rs. 1.09 crores were paid through different cheques, all drawn on Bank of Baroda, Adarsh Nagar, Jalandhar. Regarding land measuring 21 acres 7 kanals 17 marlas (chahi), Rs. 10 lacs were paid as earnest money, vide cheque No. 087030 dated 5.8.2005 and another Rs. 41 lacs were paid through different cheques, all drawn on Bank of Baroda, Adarsh Nagar, Jalandhar. These payments were proved by examining the bank officials. Therefore, the prayer has been made for setting aside the judgments and decrees of the lower appellate Court.

The learned senior counsel has also referred to various provisions regarding registration of the documents. Section 32 of the Registration Act, 1908, provides as to before whom the document is to be presented for registration. Section 34 of the Registration Act provides for enquiry before registration by registering authority, which is reproduced as under :-

“34. Enquiry before registration by registering officer-

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(1) and (2) xxxxxxxxxx

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(3) The registering officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.”

Section 35 of the Registration Act provides for procedure on admission and denial of execution respectively. It also provides that once the execution is admitted, the registering officer shall register the document, as directed in Sections 58 to 61 inclusive.

Section 35 of the Registration Act is reproduced as under :-

“35. Procedure on admission and denial of execution respectively.—

(1)(a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the person they represent themselves to be, and if they all admit the execution of the document, or

(b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or

(c) if the person executing the document is dead, and his representative or assign appears before the

registering officer and admits the execution, the registering officer shall register the document as directed in sections 58 to 61 inclusive.

(2) xxxxxxxx xxxxxxxx”

The learned senior counsel for the appellants contends that under Section 77 of the Indian Registration Act, in case of refusal to register a document by the Registrar, the Civil suit is competent. Section 77 of the Indian Registration Act is as under :-

“77. Suit in case of order of refusal by Registrar.-

(1) Where the Registrar refuses to order the document to be registered, under section 72 or a decree section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-sections (2) and (3) of section 75 shall, mutatis mutandis, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the documents shall be receivable in evidence in such suit.”

It has been argued that the registration of sale deeds

was refused on the basis of Notification No. 11/39/82/revenue 1968 Chandigarh, dated 7.8.1987 and Memo No. 11/39/82J-11/revenue 1968 Chandigarh, dated 31.1.1992. It is argued that the said memo/notifications cannot override the provisions of the Registration Act, 1908.

The learned senior counsel has placed reliance upon the authority of this Court in Krishan Gopal Kataria and another Versus State of Punjab through the Secretary to Government Revenue Department, Civil Secretariat, Chandigarh and others, 1986 AIR (Punjab) 328, where in a similar case in which the registration of the lease deed regarding the Dera land was refused on account of instructions of the Government. It was observed as under :-

“11. It is apparent from the perusal of the various provisions of the Act that the powers of Sub-Registrars and Registrars have been clearly defined and demarcated by the Act. Clear provisions have been made authorising the Sub-Registrar to refuse to register documents if they are not properly executed or presented or the subject-matter of the document lay beyond the territorial jurisdiction of the Registrar or the Sub-Registrar as the case may be. The Sub-Registrar can refuse to register a document under S. 21 of the Act, if it does not contain the description of the immoveable property sufficient to identify the same; if the document is not presented within four months of the date of its

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execution; under S. 28 if the document is presented for registration in the office of the Sub-Registrar within whose Sub-District the whole or some portion of the property is not situated; under S. 32 if the document to be registered is not presented by the person executing it or claiming under the same or by representative or assign of such person; under S. 35 if the Sub-Registrar is not satisfied about the identity of the person/persons they represented themselves to be, or such a person or persons do not admit the execution of the document, or a person or such a persons appear to be minor or lunatic or idiot or if the person by whom the document purports to be executed is dead and his representatives or assigns deny its execution. There is no provision in the Act requiring or authorising the Sub-Registrar to refuse to register a document because of any instructions issued by the State Government to the Registrar, restraining or prohibiting him from registering a document. Under S. 69 the Inspector General of Registration has been invested with the general superintendence over all the Registrars functioning in the State and to make Rules consistent with the Act,. Provided for the matters mentioned therein. The Sub-Registrar and the Registrar are the creation of the statute and they draw their authority therefrom. Their powers and duties are covered by the Act. Their statutory functions could not be curtailed by any executive instructions issued by the State Government or the Registrar. Instructions by the State Government and

Registrar, Patiala, were wholly without jurisdiction and were not binding on the Sub-Registrar. The Sub-Registrar did not reject the prayer of the petitioners for registering document because any one or more of the conditions specified in any of the sections of the Act mentioned above had not been fulfilled or violated. He had declined to register the lease deed only because instructions issued by the respondent had debarred him from registering the lease deeds relating to the properties of the religious institutions.”

A Division Bench of this Court in *Hari Singh Versus Sub Registrar, Narnaul*, 1998 (2) PLJ 17 has observed as under :-

“9. The Registration Act itself is a complete code. All reasons have been specifically enumerated under Sections 21, 23, 28, 32 and 35 of the Act for which a Sub Registrar or the Registrar may refuse to register the sale deed and other documents required to be registered under the Act. The Act nowhere provides that the Sub Registrar/Registrar can refuse to register the lease deed/sale deed pertaining to a property the ownership of which is in question. It does not fall within the domain of the Registrar or Sub Registrar to ask the executant of the deed to establish his or her ownership in respect of the property which is subject matter of the deed of conveyance. The legislature, in its wisdom, has not thought it proper to make such a provision in the Act authorising the Registrar/Sub Registrar to make a probe into the ownership of the property sought to be

transferred in any manner. The provisions of Section 34 of the Act empower the Registering Officer to make inquiry before registration of a document. The Registering Officer has the right to make inquiry whether or not such document was accepted by the persons by whom it purports to have been executed and to satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document and the case of any person appearing as a representative, assignee or agent satisfy himself of the right of such person to appear.

10. When a document is presented for registration, the Registrar/Sub Registrar has the power to look into and satisfy himself that the requisites of the provisions contained in Sections 21, 23, 28 and 35 have been fulfilled. After appearance of the persons under sub-section (1) of Section 34 of the Act, the law mandates the Registering Officer to enquire whether or not such document was executed by the persons by whom it purports to have been executed and to satisfy himself as to the identify of the persons appearing before him and alleging that they have executed the document and in the case of any person as a representative, assignee or agent, satisfy himself of the right of such person so to appear. If in any case any of the requirement of the said provision is not satisfied, the Sub Registrar has the power to refuse the registration of a document on the ground that the ownership of the property is in dispute. Therefore, under the Act, neither the Sub Registrar has

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any power to refuse the registration of the sale deed on the ground of disputed ownership of the property nor the Registrar had any authority to remand the case to the Sub Registrar directing him to provide full opportunity to both the parties to lead evidence about the ownership of the disputed land. Therefore, the orders dated 1.10.1996, Annexure P1 and dated 19.11.1996 Annexure P-2, are liable to be set aside.”

The learned senior counsel for the appellants contends that in this case, the consideration is proved. The claim of the plaintiffs was admitted by Mahant Piara Dass, who had executed the lease deeds. The State filed the appeal against the judgment and decree of learned Civil Judge (Junior Division), Jalandhar, and erroneously mentioned the name of the Mahant Piara Dass as a co-appellant, whereas the perusal of the lower appellate Court file shows that the memo was filed only on behalf of State by the Government Pleader and that the Mahant (defendant No. 2) did not sign the grounds of appeal nor did he sign the power of attorney. Therefore, his name was incorrectly mentioned as a co-appellant. Infact, the Mahant admitted the claim of the plaintiffs. As such, his limited prayer is that the registration of the said sale deeds should be ordered.

Now, the question would arise whether the lower appellate Court could go into the merits of the alienation to hold that

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the sale deed could not be registered ?

I am of the view that in this case, the prayer was for registration of the lease deeds. It is not a case where the alienation by the Mahant has been challenged. Therefore, in my view, the lower appellate Court erred in going into the question whether the Mahant was competent to execute the lease deeds and whether the lease deeds are for legal necessity or benefit of the Dera. Therefore, the findings of the lower appellate Court in this regard are reversed.

So far as the question of limitation is concerned, the same was dealt with by the lower Court and it was held that from the date of knowledge, the suits are within limitation.

In view of the provisions of the Registration Act, 1908, as discussed above, and the case law laid down by this Court, as discussed above, I am of the view that the Joint Sub Registrar, Adampur and the Deputy Commissioner-cum-Registrar, Jalandhar, erred in refusing to register the lease deeds. Therefore, while reversing the findings of the lower appellate Court, the findings of the lower Court are affirmed.

As a result of the foregoing discussion, the present appeals are allowed. The impugned judgments and decrees dated 12.7.2013, passed by the learned District Judge, Jalandhar, are

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hereby set aside and the judgments and decrees dated 20.11.2012, passed by the learned Civil Judge (Junior Division), Jalandhar, are upheld. Consequently, the limited prayer put before this Court is allowed and the defendant-State through Joint Sub Registrar, Adampur and the Deputy Commissioner-cum-Registrar, Jalandhar, are directed to register all the three lease deeds dated 23.7.2007, within a period of thirty days, from the date of passing of the present judgment, subject to the appellants paying the necessary registration charges. Since during the litigation, Mahant Piara Dass, executant, died, but in the written statement, he had admitted the claim of plaintiffs, therefore, for apparent reasons, personal appearance of executant will not be insisted upon.

(KULDIP SINGH)
JUDGE

7.12.2015
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