

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

RSA No.1568 of 2014 (O&M)

Date of Decision: 30.11.2015

Balkar Singh

.....Appellant

Versus

Bhupinder Kaur

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Baljinder Singh, Advocate
for the appellant.

Mr. Gulam Nabi Malik, Advocate
for respondent.

RAJ MOHAN SINGH, J.

[1]. Defendant-Balkar Singh has filed this appeal on his own behalf as well as on behalf of his brother Rachhpal Singh who had died during pendency of the suit.

[2]. This appeal has been arisen against the judgment and decree dated 23.01.2014 passed by District Judge, Barnala vide which judgment and decree dated 20.09.2014 passed by Civil Judge (Junior Division), Barnala was upheld.

[3]. Plaintiff -Bhupinder Kaur filed a suit for possession in terms of permission granted vide orders dated 26.02.1998 and 09.03.1998 passed by the Civil Court to file the suit on same

cause of action. Plaintiff alleged that she is owner in possession of the land in question to the extent of 190/2619 share. Earlier suit was filed on 27.11.1992. Defendants during pendency of said suit dispossessed the plaintiff forcibly. Defendants got executed sale deed No.4214 dated 10.08.1987 registered on 12.08.1987 and sale deed No.4194 dated 10.08.1987 registered on 11.08.1987 by fraud with the plaintiff in collusion with marginal witnesses namely Virsa Singh and Ajit Singh scribe of the documents.

[4]. Plaintiff alleged that she never agreed to sell the land in question in favour of defendants nor executed any sale deed. Sale deeds were claimed to be the result of fraud as the plaintiff being rustic villager woman did not know anything about the procedure of selling the land except how to sign. Partition case was pending before the Assistant Collector 1st Grade, Barnala. Defendants and marginal witnesses of the alleged sale deeds used to assist the plaintiff in said case of partition. Defendants along with marginal witnesses brought the plaintiff to Tehsil Complex, Barnala on 10.08.1987 and 11.08.1987 on the pretext of getting her portion of better quality in partition proceedings and asked her to sit in *Khokha* of deed writer.

[5]. Plaintiff is a widow and no other sale consideration was passed to her for the execution of alleged sale deed. Alterations

and changes were made in the alleged sale deeds without consent of the plaintiff in connivance with employees of the registration authority. Marginal witnesses were related to the defendants being of the same group. Possession was never delivered to the defendants. Plaintiff became victim of fraud by the defendants. Plaintiff never appeared before the Sub-Registrar, nor received any sale consideration, nor signed any receipt of registration and therefore, plaintiff is not bound by the sale deeds.

[6]. Plaintiff came to know about the alleged sale deeds on 10.08.1992 and after finding that fraud had been committed by defendant upon her, she filed Civil Suit No.877. During pendency of that suit, plaintiff was dispossessed forcibly in the month of June, 1997 which prompted the plaintiff to withdraw the suit with a permission to file fresh one with the same cause of action. With this background suit was filed.

[7]. The suit was contested by the defendants on number of grounds i.e. maintainability, *estoppel*, court fee and jurisdiction etc. On merits ownership of the plaintiff over the suit land was admitted, but it was pleaded that she executed sale deeds in favour of defendants of her own free will and also delivered possession to the defendants. Since then, defendants claimed that they were in continuous possession of the land in question.

[8]. After filing replication, trial Court framed the following issues:-

- “1. Whether the sale deed dated 10.08.1987 registered No.4194 and sale deed No.4214 dated 10.08.1987 are result of fraud as alleged in the plaint, if so its effect? OPP*
- 2. Whether the plaintiff is not bound by mutation No.3156? OPP*
- 3. Whether the plaintiff is entitled to declaration as prayed for? OPP*
- 4. Whether the plaintiff has no locus standi to file the suit? OPD*
- 5. Whether the plaintiff is estopped by her act and conduct? OPD*
- 6. Whether the suit is not maintainable? OPD*
- 7. Whether the suit is barred by Order 2 Rule 2 CPC?OPD*
- 8. Whether the defendants are entitled to special costs as alleged in the written statement? OPD*
- 9. Whether the plaintiff has paid less court fees as has not been fixed? OPD*
- 10. Whether the plaintiff has filed present suit against permission of the court as alleged in*

the legal objections No.4 of the written statement. If so its effect? OPD

11. Relief.”

[9]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[10]. Earlier Civil Suit No.887 dated 27.11.1992 was filed by the plaintiff against the defendants by taking a specific ground that the defendants had obtained sale deeds by impersonation of the plaintiff. An application to withdraw the said suit was filed with a permission to file fresh suit on the same cause of action. The said application was allowed vide order dated 26.02.1998 passed by the Civil Judge (Jr. Divn.) Barnala (Ex.P2). Plaintiff was allowed to file fresh suit on same cause of action. Earlier suit was withdrawn on 09.03.1998.

[11]. Trial Court returned finding on issue No.1 in favour of plaintiff and ultimately after deciding other issues decreed the suit of the plaintiff.

[12]. Defendants remained unsuccessful before Lower Appellate Court. That is how the present appeal came to be filed before this Court.

[13]. In view of Full Bench judgment of this Court in **Ganpat vs. Smt. Ram Devi and others 1977, PLR Page I**, framing of question of law was having no effect on the maintainability of the

appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is *sine qua non* for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clauses (a) to (c) of Section 100(1) CPC. Now second appeal requires substantial question of law to be framed. The interference cannot be made only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim "*interest reipublicae ut sit finis litium*".

[14]. The appellant has formulated following questions of law in para No.21 of the grounds of appeal :-

- “(a) *Whether the impugned judgments-decrees passed by the Id. Courts below are illegal and perverse and run contrary to the oral as well as documentary evidence on the file and are a result of mis-reading and non-reading of material evidence and pleadings on the file?*
- (b) *Whether the suit of the plaintiff-respondents was certainly hopelessly time barred when she filed the present suit on 27.07.1998 especially when she was aware of the questioned sale*

deeds from the date of their execution or at least from 30.09.1987 when mutation was sanctioned in her presence on the basis of questioned sale deeds or when she had filed the reply on 03.08.1989 in Khasra Girdawari proceedings or from 09.04.1990 when she signed the report in the matter of Khasra Girdawari?

(c) *Whether registered document can be contradicted on the basis of oral evidence especially when the presumption of truth is attached to the same and more especially when the said registered document carries a presumption that it was validly executed registered document, genuineness of transaction?*

(d) *Whether questioned sale deeds can be declared as result of fraud as alleged in the plaint on the solitary statement of the plaintiff-respondent herself especially when the defendants proved the due execution of the above said sale deeds on record by examining DW1 Raghupati Rai, deed writer and DW2*

Virsa Singh, the marginal witness of the above said sale deeds?

- (e) *Whether the said Annexures Ex.P5 and Ex.P7 which are attached with the questioned regd. sale deeds can be said that the same are not part and parcels of the questioned sale deeds especially when the same are mentioned in the said regd. sale deeds and more especially when the plaintiff-respondent herself appended her own signatures on the said Annexures?*
- (f) *Whether questioned registered sale deeds can be rendered null and void merely on the ground that sale consideration was not paid before the Sub Registrar?"*

[15]. I have heard arguments on both sides and have also perused material on record.

[16]. In order to prove that sale deeds are result of fraud, under issue No.1, the plaintiff herself appeared as PW 1 and proved other documents on record. Defendants on the other hand examined Raghupati Rai, deed writer as DW1 in the context of proving sale deeds at the instance of Bhupinder Kaur. Specific Khasra numbers were earlier mentioned in the sale

deeds but the same were got typed Annexure PW4/A regarding share of Bhupinder Kaur at her instance after cutting from Mark A to A1 in the sale deed Ex.P4. He also appended his signatures on cutting Mark A to A1 and Mark B to B1. Ajit Singh, Sarpanch and Virsa Singh were the attesting witnesses, who attested the sale deeds. The witness further deposed that he also typed sale deeds dated 10.08.1987 Ex.P6 which was registered on 12.08.1987 at the instance of Bhupinder Kaur in favour of Balkar Singh and also referred khasra numbers but thereafter, got typed Annexure Ex.PW6/A after cutting the specific khasra numbers at the instance of Bhupinder Kaur. Cutting from Mark A to A1 and Mark B to B1 in the sale deeds were made at the instance of Bhupinder Kaur and she also appended her signatures qua the cutting portion. The sale deed Ex.P6 and Annexure Ex.P6/A were read over to Bhupinder Kaur who signed the same in token of correctness. Attesting witnesses namely Ajit Singh, Sarpanch and Virsa Singh attested the documents. Chanan Singh on behalf of vendee also appended his thumb impression. Attesting witness Virsa Singh appeared as DW 2 and he corroborated the statement of deed writer.

[17]. Balkar Singh himself appeared as DW 3 and also brought on record Ex.DW1 i.e. order dated 19.09.1992, order

dated 07.03.1995 Ex.D2 and order dated 07.03.1991 Ex.D3. Passing of consideration remained a contested issue between the parties.

[18]. Plaintiff has assailed the sale deeds being null and void. Attesting witnesses Virsa Singh is father-in-law of defendant Balkar Singh. Other daughter of Virsa Singh is daughter-in-law of Ajit Singh, Sarpanch who is also a attesting witness to the sale deeds. Husband of the plaintiff has already expired. Plaintiff re-married Jaswinder Singh about 20-23 years ago and two children were born out from this wedlock. Plaintiff came to know about the sales when she contacted Halqa Patwari to obtain Jamabandi for the year 1992. Plaintiff has admitted that she entered into an agreement to sell dated 11.08.1997 EX.P4 with Balkar Singh. Said agreement to sell recites specific khasra numbers. At the time of withdrawal of the earlier suit, plea of fraud was taken. In the partition proceedings initiated by Harbans Kaur and Baljinder Kaur against Jaswinder Singh and others were in progress at the time of alleged execution of sale deeds. Partition proceedings were pending at different stages.

[19]. Deed writer Raghupati Rai DW1 has admitted in his cross examination that photocopy Mark B of the extract of his register of the alleged sale deeds does not bear any reference

of Annexure P-5 appended with the sale deed Ex.P4 and Annexure P7 appended with the sale deed Ex.P6. Apparently, Annexures P5 and Annexure P7 were separately prepared to those sale deeds Ex.P4 and Ex.P6 under-challenge. The witness has also admitted that Annexures P5 and P7 did not bear the initials of Sub Registrar. Sale deed No.4194 has not been entered in Annexure P5. The witness again admitted that khasra numbers underneath cutting Mark A to Mark A/1 were not readable and he did not make any reference about mentioning of specific khasra numbers underneath the said cutting in sale deed No.4194.

[20]. DW2 Virsa Singh was not fully cross-examined because some portion of cross examination of the witness was deferred and thereafter, it was never concluded. Virsa Singh in his cross examination has admitted that he cannot say as to whether Tehsildar appended his signatures on Annexures or not, but Bhupinder Kaur asked to executed the sale deeds of her share. The statement of this witness was found to be contrary to the actual fact attached with the Annexures that these Annexures were prepared and produced before the Tehsildar who appended his seal and signature but the same are not available on the Annexures Ex.PW4/A and Ex.PW6/A referable to Ex.P5 and Ex.P7 respectively being exhibited

repeatedly during trial. If sale deed Ex.P4 is separated from Annexure P5, the same does not carry any property alleged to be sold vide the sale deed. Similarly, sale deed Ex. P6 if separated from Annexure P7 does not refer any property alleged to be sold vide the sale deed. Admittedly, Annexure P5 appended with sale deed Ex. P4 and Annexure P7 appended with sale deed Ex.P6 did not bear any attestation of any authority or signature to show that said Annexures are part of sale deeds Ex.P4 and Ex.P6. The Annexures could have been typed on stamp papers instead of simple papers.

[21]. Chanan Singh put his thumb impressions on behalf of vendees i.e defendants who did not append their signatures on the sale deed for the reasons best known to them. The evidence on record is suggestive of the fact that the modus operandi of the defendants was so complex that plaintiff had to take all the necessary grounds to nullify the effect of the sale deeds. Sale deeds though carry signatures of plaintiff but were not executed in favour of the defendants who also could not establish on record as to how the sale consideration was passed over to the plaintiff. Significantly, sale deed Ex.P4 without Annexure P5 and sale deed Ex.P6 without Annexure P7 do not carry any title of any property in favour of the defendants. Defendants were legally required to prove Annexure P5 and Annexure P7 as part

of sale deeds Ex.P4 and Ex.P6 respectively by way of leading cogent evidence which they could not lead. Ultimately sale deed No.4194 dated 10.08.1987 and sale deed No.4214 dated 10.08.1987 are apparently proved to be fraudulent. Consequently, plaintiff is not bound by the mutation and is entitled to declaration as prayed.

[22]. Perusal of sale deeds Ex.P4 and Ex.P6 shows that they do not bear signatures of Sub Registrar on the cutting portion and there is no date mentioned in the handwriting of the Sub Registrar on the endorsement. Naib Tehsildar RW1 Ram Murti Sharma also admitted that cutting of both the sale deeds do not bear his initials. Perusal of sale deeds as well as Annexures Ex.P5 and Ex.P7 shows that the sale deed is not entered in Annexure P5 and second sale deed is not entered in Annexure P7. If the sale deed is separated, then the same does not refer any property alleged to be sold vide sale deed. Similarly, in respect of second sale deed Ex.P6 which if separated from Annexure P7 does not refer to any property allegedly sold vide that sale deed. The Annexures attached to sale deeds were also required to be registered separately with the Sub Registrar. Ram Murti Sharma, retired Naib Tehsildar while appearing as RW1 has admitted this fact that no separate registrations was done for the Annexures which were submitted along with sale

deeds at the time of registration. Apparently, sale deeds Ex.P4 and Ex.P6 do not bear any signature or initial of the Sub Registrar. No evidence has come forth in respect of passing of consideration to the plaintiff. Ram Murti Sharma RW1 has categorically admitted that no sale consideration was passed in his presence at the time of registration of sale deeds. Defendants have alleged that sale consideration was paid at home at the time of registration of sale deed but no evidence has come forth nor any witness has been examined in whose presence the sale consideration was passed over to the plaintiff. Plaintiff being illiterate rustic villager lady put the signature as per wishes of defendants but the defendants left material lacuna in the case thereby, bringing the transaction within the four corners of fraud. The Annexures are on simple papers. The entry regarding these Annexures do not find mention on the register of the scribe. These Annexures do not bear initials and signatures of the Sub Registrar. Sale deeds carry cutting. Khasra numbers underneath the cuttings are not readable, if sale deeds are separated from Annexures then they do not refer to any property alleged to be sold by the sale deeds.

[23]. In considered opinion of this Court, the aforesaid facts make out a case of apparent fraud. Question No.(a) as formulated by the appellant is contrary to the evidence proved

on record. The judgments and decrees are proved to be legal and based on correct appreciation of evidence. No misreading can be attracted nor the impugned judgments and decrees are found to be perverse in any manner. Question No.(b) as framed does not arise inasmuch as that Order 23 Rule 2 CPC if read in conjunction with Section 14 (3) of Limitation Act would entitle the plaintiff to deduct the period consumed during pendency of earlier suit. Reference can be made to Section 14 of Limitation Act which prescribes the following conditions:-

- (1) The plaintiff who filed the suit had been prosecuting the proceedings with due diligence.
- (2) The proceedings resorted by plaintiff was based on same cause of action.
- (3) Former proceedings were prosecuted by the plaintiff in good faith in a Court and
- (4) The Court due to defect of jurisdiction or other cause of like nature was enable to establish such proceedings.

[24]. Once permission was accorded by the Civil Court to institute fresh suit the same was a cause of a like nature as contemplated under Section 14 (3) of the Limitation Act. The expression “ or other cause of a like nature” contained in Section 14 (3) of the Limitation Act has been answered in the

judgments of **“India Electric Works Limited vs. James Mantosh and another, AIR 1971 Supreme Court 2313.”**

[25]. Mutation No.3156 has been challenged. This mutation has been wrongly mentioned, as admittedly mutation No.2847 dated 30.09.1987 and mutation No.2848 dated 30.09.1987 Ex.A5 and Ex. A6 were sanctioned on the basis of sale deeds. The findings were corrected by the Lower Appellate Court under question No.(b). The suit came to be filed on detection of fraud. Civil Suit No.212 dated 09.04.1990 was decided on 07.10.1991 Ex.D3. Said suit was for injunction. At that time factum of sale deeds were not in the knowledge of the plaintiff otherwise, she would not have filed simplicitor suit for injunction, rather would have challenged the sale deeds. Withdrawal of earlier suit coupled with factum of proved fraud make the suit within limitation as the sale deeds based on fraud or the transaction based on fraud can be drawn out at any stage of litigation.

[26]. Question No.(c) as formulated does not arise at all. Due to overwhelming evidence on record, case arrived at irresistible conclusion that it is a case of fraud. Fraud vitiates all solemn acts. Statements of DW1 and DW2 have been lawfully analysed for arriving out factum of fraud in execution of sale deeds. Annexures attached to the sale deeds give different connotation, therefore, question No.(d) and (e) cannot be

entertained. The sale deeds are proved to be nullified as passing of consideration is not proved on record by way of any cogent evidence. Sale without consideration is a nullity. No evidence has come in whose presence the sale consideration was passed over to the plaintiff in the house.

[27]. Having considered the controversy in detail, this Court does not subscribe the arguments advanced by the appellant. Consequently, this appeal is dismissed being devoid of merits.

November 30, 2015
Prince

(RAJ MOHAN SINGH)
JUDGE