

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 2080 of 2014 (O&M)
Date of decision: October 06, 2015

SUKHWINDER SINGH

.....APPELLANT

VERSUS

MALKIT KAUR

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

- 1. Whether the Reporters of the Local papers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the digest? (✓)*

Present:- Mr. Avtar S. Khinda, Advocate
for the appellant.

JASPAL SINGH, J

By virtue of this appeal, the plaintiff-appellant has challenged the judgement and decree dated December 19, 2013 passed by Additional District Judge, Kapurthala whereby the judgment and decree dated April 25, 2012 passed by Additional Civil Judge, Sr. Division, Kapurthala was upheld vide which the suit of the plaintiff-appellant for declaration and permanent injunction, was dismissed.

2. The brief facts of the case are that previously Sarwan Singh, father of plaintiff, was the owner of land measuring 9 kanals and 14 marlas. He died on January 21, 2000 and after his death, plaintiff-Sukhwinder Singh being son inherited the property. When plaintiff enquired from the Tehsil

Complex, he came to know about a sale deed dated August 24, 1994 in respect of land measuring 9 kanals of land in favour of defendant-Malkit Kaur, which is without consideration and is illegal, null and void. On the basis of sale deed, defendant has threatened the plaintiff to alienate the suit land, which necessitated the filing of suit.

3. Upon notice, the suit was resisted by defendant by filing written statement raising preliminary objections *inter alia* on the ground that the suit is not maintainable; that plaintiff has got no cause of action or *locus standi* to file present suit; suit is time barred; plaintiff is estopped by his act and conduct from filing present suit; defendant is a bonafide purchaser for value; suit is not properly valued for the purpose of court fee and jurisdiction. On merits, it was admitted that Sarwan Singh father of plaintiff was owner in possession of land measuring 09 kanals 14 marlas. It was further alleged that Sarwan Singh sold the land measuring 9 kanals comprised in Khasra No.23//25/3-18, 24//21/2/5-16 to defendant vide sale deed dated 24.08.1994 for a sum of ₹78,500/- Mutation has been sanctioned in the name of defendant on the basis of sale deed, so the defendant has every right to transfer the suit land. Rest of the allegations were denied being wrong. Replication was filed to the written statement in which plaintiff denied and controverted the plea taken in written statement being wrong and reaffirmed his plea taken in plaint.

3. Ld. trial court on appraisal of the pleadings of the parties, framed the following issues:-

“1. Whether the plaintiff is entitled to the relief of permanent injunction against the defendant? OPP

2. Whether the plaintiff is entitled to the relief of declaration or not? OPP
3. Whether the suit is not maintainable? OPD
4. Whether the plaintiff has no locus standi or cause of action to file the present suit? OPD.
5. Whether the plaintiff has not come to the court with clean hands? OPD
6. Whether the defendant is a bonafide purchaser? OPD
7. Relief.”

4. In order to settle the matter in controversy, both the parties were afforded ample opportunities to adduce and conclude evidence in respect of their respective pleadings and they led oral as well as documentary evidence.

5. After hearing learned counsel for the parties and bestowing due consideration to the rival submissions and scrutinizing the evidence, ld. trial court dismissed the suit vide judgment and decree dated April 25, 2012.

6. Disheartened from the said judgment and decree, plaintiff-appellant preferred the appeal before the lower appellate court but it also met with the same fate and was dismissed vide impugned judgment and decree dated December 19, 2013.

7. Aggrieved against the judgments and decrees passed by both the courts below, the plaintiff-appellant has approached this Court by way of instant appeal.

8. While challenging the issues as well as impugned judgments and decrees passed by both the courts below, it has been vehemently argued

by learned counsel for the appellant that prior to the execution of the

impugned sale deed dated August 24/26, 1994, an agreement between Sarwan Singh, father of the plaintiff and defendant Malkit Kaur in respect of land measuring 12 kanals was in existence but there is no recital in the sale deed Ex. P-2/D2 in this regard. Even otherwise, agreement of sale was executed in respect of 12 kanals of land for a sum of ₹57,000/- whereas the impugned sale deed Ex.P-2/D-2 for 9 kanals has been executed and registered for a sum of ₹78,500/- which is ununderstandable. Learned counsel for the appellant further contends that one of the marginal witnesses of the sale deed Ex.P-2/D-2 namely Dalip Singh has appeared in the witness box as PW-2, who has clearly testified that the sale deed is without consideration and no amount was given by Malkit Kaur to Sarwan Singh but both the courts below have failed to appreciate the said fact. On this score alone, impugned judgments and decrees are liable to be set aside. Even, the sale deed dated August 24/26, 1994 is nothing but a false and fabricated document and it being without any consideration, is liable to be ignored and disbelieved. While referring to the statement of Malkit Kaur (DW-1), learned counsel for the appellant has pointed out that even the stamp paper has been purchased by her husband and they visited the office of Tehsildar at least for 20 times for execution of sale deed. This fact alone is sufficient to infer that the sale deed dated August 24/26, 1994 is a sham transaction and is forged and fabricated one.

9. While concluding his arguments, it has been averred by learned counsel for the appellant that in view of the various factors pointed out above, the impugned judgments and decrees are liable to be set aside and suit of the plaintiff deserves to be decreed.

made by learned counsel for the appellant and scrutinizing the impugned judgments and decrees, this Court is not in agreement with the submission made by learned counsel for the appellant.

11. No agreement of sale alleged to have been executed in between Sarwan Singh, father of appellant-plaintiff and respondent-defendant/Malkit Kaur in respect of land measuring 12 kanals, has seen the light of the day. The mere assertion of the appellant-plaintiff in this regard can be said to be a self-serving one and it carries no legal weight. Similarly, in the absence of any such agreement of sale, it also cannot be inferred that the agreement of sale was executed for a sum of ₹57,000/- in respect of the land measuring 12 kanals. The sale deed Ex.P-2/D-2 is a registered document and it carries evidentiary value. The registration of sale deed rather authenticates the due execution of the sale deed. If there is any difference in the amount recited in the sale deed, evidentiary value of the sale deed cannot be discarded or disbelieved.

12. Here, it would also be pertinent to mention that the sale deed Ex.P-2/D-2 was executed and registered in the month of August 1994 whereas Sarwan Singh breathed his last on January 21, 2000 as is evident from his death certificate Ex.P-1. After the execution of the sale deed Sarwan Singh lived in this world approximately for a period of 6 years but during his life time, he never challenged the sale deed in question. It is also important to note that Dalip Singh-PW-2 is one of the attesting witnesses of the sale deed, who has been examined by the appellant-plaintiff. When he was subjected to cross-examination, he has admitted in clear terms that Sarwan Singh appended his signatures on the sale deed in his presence as

well as in the presence of Gurdev Singh, Sarpanch after admitting the

contents thereof to be correct. Moreover, sale deed has been challenged on December 04, 2007 i.e. after about 7 years after the demise of Sarwan Singh, which is otherwise clearly barred by limitation. Even otherwise, during the course of arguments, learned counsel for the appellant could not point out any illegality or infirmity in the impugned judgments and decrees. No other point was also urged by learned counsel for the appellant during the course of arguments.

13. In the light of what has been discussed above, this Court does not find any merit in the instant appeal. As such, the same is dismissed but with no order as to costs, whereby the impugned judgments and decrees passed by both the courts below are affirmed.

October 06, 2015
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(JASPAL SINGH)
JUDGE