

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

RSA No.648 of 2015(O&M)
Date of decision: 23.02.2015

Gurbax Singh

...Appellant

Versus

Jai Parkash and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Chand Ram Olla, Advocate for the appellant.

1. Whether reporters of 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?

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was dismissed by the trial court, vide judgment and decree dated 26.03.2013. Appeal preferred against the said decree failed and was dismissed on 15.09.2014. This is how, plaintiff is before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

Briefly stated, plaintiff prayed for a decree for injunction with a prayer to restrain the defendants from interfering in their peaceful possession and ownership qua an agricultural land, comprised in khewat No.1234, khasra No.159//16/2/2/2 min east (1-10), situated at village Uklana, District Hisar. A declaration was also claimed that the registered sale deed No.120, dated 08.05.2003, was illegal, void and without consideration. It was maintained that the

said document i.e. sale deed dated 08.05.2003, was a forged and fabricated document and was obtained by defendants No.1 & 2 by playing fraud upon the plaintiff. Consequently, even a mutation No.972, sanctioned on 04.12.2004, was also liable to be set aside. As possession of the suit land was never delivered to the defendants, pursuant to the said sale deed, plaintiff continued to be in possession thereof. An injunction was also claimed, restraining the defendants from alienating the suit land in any manner. It was averred, that plaintiff happened to be the absolute owner in possession of the suit property and he never entered into an agreement to sell qua the suit land i.e. 1 kanal, nor received any consideration, therefore, from the defendants. In fact, plaintiff had sold only a land measuring 2 kanals, comprised in khewat No.1234, pursuant to a registered sale deed dated 24.09.2002, for a consideration of ₹ 30,000/-. And thereafter, plaintiff never sold any land to the defendants. It was maintained that the plaintiff had not executed the sale deed dated 08.05.2003. As plaintiff came to know of the sale deed only in September, 2009, thus, the suit.

In defence, it was pleaded, inter alia, that the plaintiff had sold a land measuring 2 kanals vide sale deed dated 24.09.2002, to the defendants. It was denied that the plaintiff had never executed the sale deed No.120, dated 08.05.2003, vide which the suit property was also sold to the

defendants. It was also denied that the document in question was forged and fabricated, and pursuant thereto, possession of the suit property was never delivered to the defendants. It was maintained that plaintiff had put his signatures on both the sale deeds in the presence of the witnesses and also before the Sub Registrar, Hisar. Since the execution of the sale deed in question, defendants happened to be the owners in possession thereof.

On a consideration of the matter in issue and evidence on record, the courts below found, that though, the sale deed No.120, dated 08.05.2003 (Ex.P1), was alleged to be a forged and fabricated document, but nothing was brought on record to substantiate the said plea. In fact, besides himself, plaintiff failed to examine any other witness in support of his claim. As plaintiff had assailed the veracity and validity of the sale deed in question, thus, burden lay upon him to show that the sale deed dated 08.05.2003, was not executed by him. Apparently, plaintiff failed to discharge the onus in this regard. On the contrary, defendants proved that the sale deed in question was duly executed, attested and registered by the competent authority. Balwan Singh (DW1), one of the attesting witnesses of the sale deed in question, testified that the sale deed dated 08.05.2003, was executed by the plaintiff, in favour of defendant Jai Parkash in his presence. Defendant Jai Parkash himself appeared as DW2 to prove his claim. The

scribe of the sale deed in question i.e. Ajay Shanker, Advocate (DW3), deposed that both the sale deeds i.e. dated 24.09.2002 & 08.05.2003, executed by the plaintiff, were scribed by him. Further, the contents of the sale deed in question were duly read over to the plaintiff and having understood and admitting them to be correct, he put his thumb impression/signatures thereupon. Recitals in the sale deed, dated 08.05.2003, revealed that the entire sale consideration had already been paid to the plaintiff at home. The back page of the sale deed in question bears the photographs of the plaintiff, defendant and the witnesses thereof. And the same also bears the thumb impression of the plaintiff. Sub Registrar, Hisar had endorsed the certificate of registration of sale deed dated 08.05.2003. Nothing was brought on record by the plaintiff to show that as to why and when he affixed his thumb impression upon the document in question and as to how the same bears his photograph. Despite opportunity granted, plaintiff failed to cross-examine the scribe i.e. Ajay Shanker, Advocate (DW3). Resultantly, it was concluded that the sale deed, dated 08.05.2003, was a legal and valid document and plaintiff was no longer owner of the suit land. As the sale deed was executed on 08.05.2003, and the present suit was instituted by the plaintiff after about 6 years on 08.12.2009, thus, the suit was apparently barred by time. Further, as plaintiff failed to prove himself to be in possession of the suit land, thus, a

simple suit for declaration, without seeking a decree for possession, was not maintainable in law. All what the plaintiff brought on record was the khasra girdawaris related to the year 2007. Plaintiff failed to bring on record the current revenue record to prove his possession. So much so, he failed to examine any witness from the vicinity, who could prove the possession of the plaintiff. As a result, the suit and thereafter, even the appeal preferred by the plaintiff against the said decree was dismissed.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is wholly devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Needless to assert, for the plaintiff to succeed, he was required to prove that the sale deed No.120, dated 08.05.2003, was indeed a forged and fabricated document and was never executed by him. Ex facie, nothing was brought on record to prove, that the sale deed in question was either a forged document or was obtained by way of fraud played by defendants upon the plaintiff. Besides himself, plaintiff failed to examine any other witness in support of his claim. Nothing

was brought on record to show that the sale deed in question did not bear the thumb impression/signatures of the plaintiff. On the contrary, defendants fully proved the due and valid execution of the sale deed dated 08.05.2003. Balwan Singh (DW1), one of the attesting witnesses of the sale deed in question, testified that the said document was executed by the plaintiff in favour of the defendants and was attested by him. Likewise, Ajay Shanker, Advocate (DW3), the scribe of the sale deed in issue, testified that in fact, both the sale deeds i.e. 24.09.2002 and 08.05.2003, executed by the plaintiff, were scribed by him. So much so, he proved the entries qua both the sale deeds that were recorded in his register (Ex.D2 & Ex.D4). Likewise, the other attesting witness of the sale deed i.e. Dharampal (DW4) also proved the execution of the sale deed No.120, dated 08.05.2003. Not only the due execution and attestation but even the registration of the sale deed in question was also proved on record. Concededly, the sale deed in question bears the photographs of the plaintiff, defendant and attesting witnesses thereof and the same was duly thumb marked by the plaintiff. Sub Registrar had endorsed the certificate of registration of the sale deed. Plaintiff failed to explain as to how the document in question bears his thumb impression and also his photograph. So much so, plaintiff failed to cross-examine the scribe of the sale deed in question i.e. Ajay Shanker, Advocate (DW3), that in a way would

constitute an admission qua the execution and registration of the sale deed in favour of the defendants. Plea of the plaintiff that he got to know qua the sale deed dated 08.05.2003, only in the month September, 2003, remained unsubstantiated on record. No evidence was led to prove the said plea. Therefore, the suit, having been filed after about 6 years, was apparently barred by time. Records show that pursuant to the sale deed dated 08.05.2003, the suit land was mutated in favour of the defendants vide mutation No.972, sanctioned on 04.12.2004. Nothing was brought on record by the plaintiff to show that he still was in occupation and possession of the suit property. That being so, the suit for declaration, without a consequential relief of possession, was not maintainable. Learned counsel for the appellant could not point out as to how the conclusions that were concurrently recorded by both the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

(Arun Palli)
Judge

February 23, 2015

Rajan

