

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**C.M. No. 9820-C of 2015 and
RSA No. 4332 of 2014**

Date of decision: 20.08.2015

Sat Pal and others

...APPELLANTS

VS.

Prem Chand

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

**Present: Ms. Sarika Gupta, Advocate,
for the applicant/appellants.**

AUGUSTINE GEORGE MASIH, J.

C.M. No. 9820-C of 2015

Prayer in this application is for impleading the legal heirs of Prem Chand-respondent-plaintiff, who has, during the pendency of the present appeal, expired on 18.06.2015. Details of the legal heirs of Prem Chand are mentioned in para-3 of the application. The application is supported by an affidavit of appellant-defendant No. 1-Sat Pal.

In view of the above, the present application is allowed. The persons mentioned in para-3 of the application are impleaded as legal heirs of Prem Chand. The amended Memo of Parties appended along with the application is taken on record subject to just exceptions. Registry is directed to place the same at the appropriate stage of the case.

RSA No. 4332 of 2014

The respondent-plaintiff, Prem Chand, filed a suit for

declaration to the effect that he was the absolute owner in possession of 10/19 share out of the land comprising in Khatuni No. 196/207, Khasra No. 158 (0-19) on the basis of the registered sale deed dated 07.05.1980 executed by Hari Kishan, deceased, father of respondent-plaintiff and appellants-defendants 1 and 2 and that they were having 1/4th share each in the remaining land i.e. 9/19 share on the basis of Will dated 15.04.1983. Further, declaration was sought that Mutation No. 1669 sanctioned on the basis of Will dated 15.04.1983 in favour of the plaintiff-defendants regarding land comprising of Khasra No. 158 (0-19) in equal shares is illegal, null, void and ineffective against the rights of the respondent-plaintiff and for permanent injunction restraining the appellants-defendants from interfering in peaceful possession of the respondent-plaintiff and further restraining the defendants from alienating the share as shown in the Jamabandi for the year 2006-07 and raising any type of construction over the suit property.

The said suit was decreed by the Civil Judge (Senior Division), SAS Nagar, Mohali on 02.03.2012, against which the appeal preferred by the appellants-defendants has been partly allowed by the Additional District Judge, SAS Nagar, Mohali vide judgment and decree dated 26.04.2014, which has been challenged in the present appeal.

It is the contention of the counsel for the appellant that registered sale deed dated 07.05.1980 alleged to have been executed by the predecessors-in-interest to the parties to the dispute, namely, Hari Kishan, who was owner in possession of the suit land comprising Khasra No. 158 (0-19) to the extent of 10/19 share of the said land, has not been produced in original and the explanation for non-production of the same, as has been

given by the respondent-plaintiff, is that he had handed it over to the Halqa Patwari for sanctioning the mutation but thereafter, he could not enquire about the same and the same is not traceable now which creates a doubt about the authenticity of the document especially when no consideration has changed hands. The sale deed is without consideration and even if it was executed, it might have been procured or got executed from Hari Kishan by the respondent-plaintiff fraudulently. She contends that the evidence, which has been produced by the respondent-plaintiff with regard to the execution of the sale deed dated 07.05.1980, thus, cannot be relied upon to return a finding that the land in dispute was sold in favour of the respondent-plaintiff by Sh. Hari Kishan. Her further contention is that the respondent-plaintiff has not disputed the Will dated 15.04.1983 executed by Sh. Hari Kishan in favour of his all four sons qua his movable and immovable property in equal shares, who died on 17.09.1989. The mutation, on the basis of the Will No. 1669 was sanctioned on 15.10.1991 in favour of the the appellants-defendants and the respondent-plaintiff in equal shares in his presence. The suit has been filed at this belated stage, which cannot be said to be within limitation. She contends that the findings recorded by the Courts below, therefore, cannot sustain and deserve to be set aside and the appeal be allowed by dismissing the suit of the respondent-plaintiff.

I have considered the submissions made by the counsel for the appellants and have gone through the judgments passed by the Courts below.

The findings with regard to the execution of the sale deed dated 07.05.1980 in favour of the respondent-plaintiff by Sh. Hari Kishan are concurrent as the respondent-plaintiff has been able to prove by producing

cogent evidence consisting of Sham Lal son of Jatinder Nath, PW2, son of the scribe of the sale deed, Shri Jatinder Nath, who has identified the handwriting and signatures of his father on the sale deed, PW3 Balwinder Singh, Clerk, Record Room of Deputy Commissioner Office, Ropar, who produced the records regarding the registered sale deed and a certified copy thereof as Ex. P1.

The respondent-plaintiff, while appearing as PW1 in his statement, stated that Daljit Singh Advocate and Bhagat Singh, Panch, attesting witnesses and Jatinder Nath, Scribe of the sale deed have died. The explanation, as given by the respondent-plaintiff with regard to the non-availability of the original sale deed, has also been accepted. The findings, thus, recorded with regard to the execution of the sale deed dated 07.05.1980, as the same has been proved, cannot be faulted with. Apart from that, the respondent-plaintiff has brought on record the re-conveyance deed of House Building Advance dated 22.05.2002 Ex. P2, which showed that he had borrowed the loan against the land while in Haryana Government service, which was the subject matter of the sale deed in the year 1980 and repaid the same.

As regards the Will, it is not in dispute that the same was executed on 15.04.1983 by Hari Kishan, on the basis of which, Mutation No. 1669 Ex. R1 was sanctioned on 15.10.1991. The Courts below, on perusal of the said mutation, concluded that at the time of sanctioning of the mutation, the respondent-plaintiff was not present and thus, the same was sanctioned at the back of the respondent-plaintiff and he obviously was not aware of such a mutation having come into existence. He came to know of the same in the year 2009 when he obtained the Jamabandi from the Patwari

of the Halqa for taking a loan against the suit land. The suit, therefore, has been found to be filed within time. It cannot thus, be said that the findings recorded by the Courts below are perverse or on the basis of the misreading of the same. Further, the Appellate Court, while partly allowing the appeal, had modified the judgment and decree dated 02.03.2012 passed by the Civil Judge (Senior Division), SAS Nagar, Mohali, to the extent that the respondent-plaintiff is owner in joint possession of the land bearing Khasra No. 158 (0-19) to the extent of 10/19 share on the basis of the sale deed dated 07.05.1980 Ex. P1 and to the extent of 1/4th share in the remaining land i.e. 9/19 share on the basis of Will dated 15.04.1983. The appellants-defendants have been restrained from alienating the suit land more than their above-mentioned share and from raising any construction therein till its partition by metes and bounds.

The judgment and decree passed by the Additional District Judge, SAS Nagar, Mohali dated 26.04.2014 being in accordance with law do not call for any interference by this Court especially when no substantial question of law arises which calls for interference by this Court.

The appeal, therefore, stands dismissed.

August 20, 2015
pj

(AUGUSTINE GEORGE MASIH)
JUDGE