

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

**RSA No.5373 of 2014 (O & M)
Date of Decision:12.02.2015**

Amarjit Singh

....appellant

Versus

Jaspal Singh and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 1.Whether Reporters of local paper may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.Aman Kashyap, Advocate
for the appellant

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiff was dismissed by the trial Court vide judgement and decree dated 28.11.2007. Appeal preferred against the said decree failed and was dismissed on 18.07.2014. 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.

In short, plaintiff prayed for a declaration that he was the owner in possession of a land measuring 17K-09M, situated at village Khumna, Tehsil Amloh, District Fatehgarh Sahib and a sale deed dated 04.10.2001, executed by defendant No.2 in favour of defendants No.3 and 4 was illegal and null and void. By way of consequential relief, a decree for injunction was also claimed restraining the defendants from changing the nature of the suit

property in any manner. It was averred that plaintiff-Amarjit Singh and Tarlochan Singh were sons of Mangal Singh. Tarlochan Singh further had two sons i.e. Zora Singh and Bishan Singh. Zora Singh and his father Tarlochan Singh both had since expired. Bishan Singh, who was issueless, was not seen or heard of by anybody for the past more than 8 years. Plaintiff i.e. Amarjit Singh, thus, was his only heir. The suit property was ancestral and coparcenary in nature in the hands of Mangal Singh and upon the death of Mangal Singh, the same devolved upon his two sons namely Amarjit Singh and Tarlochan Singh. Therefore, Bishan Singh-defendant No.2 had no right to alienate the suit property in favour of anybody without a legal necessity. Thus, the sale deed dated 04.10.2001, executed by defendant No.2 in favour of defendants No.3 and 4 was null and void and without consideration. Further, it was maintained that the sale deed dated 04.10.2001 was a fabricated document and was obtained by defendants No.3 and 4 by playing fraud upon defendant No.2. As defendants threatened to change the nature and character of the property, thus the suit.

In defence, it was pleaded, inter alia, by defendants No.3 and 4 that they neither had any relationship with Bishan Singh nor were they, the residents of the same village. It was admitted that father's name of Bishan Singh was Tarlochan Singh. However, it was denied that Bishan Singh was not seen or heard of for the last more than 8 years. In fact, pursuant to the sale deed dated 04.10.2001, he sold the suit property in favour of the defendants, a document, which was duly thumb marked by him. Further, at the time of registration of

the sale deed, the computerised photograph of Bishan Singh was taken in the office of Sub-Registrar, Amloh and the same appears at the back of the sale deed dated 04.10.2001. Thus, it was established that Bishan Singh was alive and possessed a free and sound disposing mind at the time of execution of the document. Further, plaintiff-Amarjit Singh was not the heir of Bishan Singh nor he had any right, title or interest in his property. It was denied that the suit property was ancestral and coparcenary in nature. It was denied that the sale deed dated 04.10.2001 was without any legal necessity. In fact, a part of the sale consideration was deposited by Bishan Singh in his bank account at Amloh. Thus, defendants were owners in possession of the suit property, and therefore, had a right to deal with it in the manner they liked.

On a consideration of the matter in issue and the evidence on record, the courts below found that the plaintiff had raised contradictory pleas as on the one hand he maintained that Bishan Singh son of Tarlochan Singh was not seen or heard of for the last more than 8 years and on the other, he impleaded Bishan Singh as defendant No.2 and maintained that the sale deed executed by him in favour of defendants No.3 and 4, was null and void and he had no right to alienate the suit land, without any legal necessity. Further, the evidence on record showed that Bishan Singh was alive at the time of execution of the sale deed (Ex.D1), and as claimed by defendants No.3 and 4, he was in touch with them even post execution of the sale deed. Defendant No.4 Gurcharan Singh (DW1), testified that sale deed in question was attested by two

witnesses i.e. Jarnail Singh, Lambardar and Harbhajan Singh son of Mohinder Singh. He further deposed that Malkit Singh Dhillon, scribed the sale deed and after it was read over to Bishan Singh, he thumb marked the same. Further, Bishan Singh was proved to be in a free and sound disposing mind, at the time of execution of the sale deed. He appeared before the Sub-Registrar, Amloh, for registration of the document. Sub-Registrar, Amloh, read over the contents of the sale deed to Bishan Singh, whereafter he thumb marked the same. Tarlochan Singh also signed the document, whereas both the attesting witnesses signed the sale deed. Jarnail Singh, one of the attesting witnesses, testified the due and valid execution of the registered sale deed dated 04.10.2001. Likewise, deed writer-Malkiat Singh Dhillon (DW4), corroborated the claim of the defendants. Kesar Singh (DW5) Computer Operator, Punjab and Sind Bank Branch, Amloh, proved that Bishan Singh son of Tarlochan Singh, resident of village Khumna, had deposited a part of the sale consideration i.e. ₹ 4 lacs with their branch for issuance of FDR in his favour. No cogent evidence was brought on record by the plaintiff to prove that Bishan Singh was neither seen nor heard of for the past more than 8 years. No witness from the village Khumna was examined by the plaintiff to corroborate the said plea. Nothing was brought on record to prove that Bishan Singh son of Tarlochan Singh was 'karta' of any joint Hindu family and, thus, lacked capacity to alienate the suit property but for legal necessity. In fact, the said property was recorded in the name of Bishan Singh and he being the owner in possession thereof, had sold the same to defendants No.3

and 4. Still further, nothing was brought on record to prove that the sale deed dated 04.10.2001, was a forged and fabricated document or was a result of fraud played upon by defendants No.3 and 4 upon defendant No.2. Thus, even the said plea remained unproved on record. The plaintiff never examined any expert to prove that the sale deed in issue did not bear the thumb impression/signatures of defendant No.2 i.e Bishan Singh. The due execution and registration of the sale deed dated 04.10.2001, was duly proved on record. So much so, the document bears the photograph of Bishan Singh. Nothing was brought on record to show that Bishan Singh was impersonated at the time of execution and registration of the sale deed. Resultantly, the suit filed by the plaintiff was dismissed and even the appeal preferred against the said decree failed.

I have heard learned counsel for the appellant and perused the RSA paper book.

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 devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Ex facie, the plaintiff set out contradictory pleas in support of his claim. On the one hand, it was pleaded that Bishan Singh son of Tarlochan Singh was neither seen nor heard of for the past 8

years, whereas, on the other, that the sale deed purported to be executed by defendant No.2 Bishan Singh was a result of fraud played upon by defendants No.3 and 4 upon defendant No.2. Further, suit property being ancestral and coparcenary, Bishan Singh had no authority to alienate the same without any legal necessity. The execution of the sale deed dated 04.10.2001, was duly proved. Malkit Singh Dhillon-DW4, deed writer, proved the execution of the sale deed Ex.D1. He testified that he had scribed the document at the instance of Bishan Singh in favour of defendants No.3 and 4 and an entry in this regard was duly recorded in his register, which too was proved on record as Ex.D2. Both the attesting witnesses of the sale deed dated 04.10.2001, i.e Jarnail Singh, Lambardar (DW3) and Harbhajan Singh son of Mohinder Singh also testified the due and valid execution of the sale deed in question. Sale deed (Ex.D1) is a registered document and bears the photograph of Bishan Singh. Nothing was brought on record to show that Bishan Singh was impersonated at the time of execution and registration of the sale deed. Not just that, Kesar Singh, Computer Operator, Punjab and Sind Bank Branch, Amloh-DW5, deposed that Bishan Singh son of Tarlochan Singh had deposited ₹ 4 lacs with their Branch by way of FDR (Ex.D3). However, the said amount was later withdrawn by him on 18.10.2011, vide Ex.D5. Nothing was brought on record to prove that the property was ancestral and coparcenary in nature. No evidence was led to prove that Bishan Singh indeed was neither seen nor heard of for the last more than 8 years. Nothing was brought on record to show that the sale deed in question was a

forged and fabricated document or was a result of fraud, that was purported to have been played by defendants No.3 and 4 upon defendant No.2

Learned counsel for the appellant could not point out as to how the findings that were concurrently recorded by both the Courts 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 in the present appeal. The same being devoid of merit is accordingly, dismissed.

12.02.2015

neenu

(ARUN PALLI)
JUDGE