

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

(1)

**Regular Second Appeal No.96 of 2014 (O&M)
Date of Decision: November 26, 2015.**

Paremshwari and others

.....APPELLANT(s).

VERSUS

Smt. Premi and another

.....RESPONDENT(s).

(2)

Regular Second Appeal No.167 of 2014 (O&M)

Mange Ram and others

.....APPELLANT(s).

VERSUS

Smt. Premi and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Raj Kumar Gupta, Advocate
for the appellant (s).

SURINDER GUPTA, J.

RSA-96-2014

Hukma son of Rattan Singh filed suit seeking relief of permanent injunction to restrain the defendants from dispossessing the plaintiff from the suit land measuring 0 kanal 6 marlas or to take exclusive possession of the same in an unlawful and illegal manner.

The suit was decreed by Civil Judge (Junior Division), Kaithal with the observations in para 14 and 15 of the judgment, which read as follows:-

“14. After hearing the learned counsels for the parties and perusing the documents, this court is of the opinion that the sale deed dated 17.06.1983 is inoperative i.e. it was never given effect to. No possession was delivered to the defendant, as the same is nowhere reflected in the revenue records for the next 25 years. Even otherwise, the sale consideration of Rs.300/- of six marlas land is deficient. Also, Ratti Ram @ Ratia was a co-owner of the suit land and could not have alienate the entire suit land himself since he was co-sharer to the extent of only half share.

15. In view of the above discussion, sale deed in favour of defendant is null and void and inoperative and does not bound the plaintiff who is L.R. of another co-sharer, in the same suit land. Hence, the defendant is liable to be restrained from dispossessing the plaintiff.”

The first Appellate Court set aside the findings of the lower Court and dismissed the suit.

The case of the plaintiff, in brief, is that he is in possession of the suit land measuring six marlas bearing khewat No.36 khatauni No.59 rectangle No.50 killa No.23/2 out of the total land measuring 91 kanals 9 marlas situated in village Sinad, Tehsil and District Kaithal. Earlier, father of plaintiff and Ratti Ram @ Ratia (uncle) of plaintiff were owner of the land measuring 91 kanals 9 marlas in equal shares and after their death, the suit land was inherited by their legal heirs. The defendant has no right, title or

interest in the suit land and threatened to alienate the same and dispossess the plaintiff claiming his title on the basis of sale deed dated 17.06.1983 executed by Ratti Ram @ Ratia in his favour. Ratti Ram @ Ratia had no right, title or interest to transfer the share of the plaintiff or his father. The plaintiff came to know regarding the sale deed when the defendant tried to get sanctioned a mutation in his favour from Assistant Collector 1st Grade, Kalayat on 22.02.2008.

Defendant Gopi Ram contested the claim of plaintiff inter-alia pleading that he had purchased the suit land vide sale deed dated 17.06.1983 and is in possession of the same. He is using the suit land for storing his cow dung '*Bhatoras*' and agricultural equipments. This suit has been filed at the behest of Mange Ram, Satpal and Balbir sons and Ramkali daughter of Ratti Ram, who are real cousin of plaintiff. Said Mange Ram etc. have also filed a separate suit against the defendant with regard to the suit land. Ratti Ram was the owner in possession of the suit land at the time of execution and registration of the sale deed dated 17.06.1983 and transferred possession of the same in favour of defendant.

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Plaintiffs Mange Ram, Satpal and Balbir, legal heirs of Ratti Ram @ Ratia who had executed the sale deed dated 17.06.1983 in favour of defendant Gopi Ram filed this suit challenging the sale deed and seeking the relief of injunction to restrain defendant from dispossessing the plaintiffs from the suit land and also from alienating the same.

The case of the plaintiffs, in brief, is that the sale deed dated

misrepresentation. This sale deed was executed by an impostor posing as Ratti Ram

The defendant contested the claim with the similar averments as taken in the written statement filed in the civil suit instituted by Hukma.

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Plaintiff Hukma himself appeared on 16.07.2014 as PW1 and placed on file copy of Jamabandi for the year 2003-04 and copy of mutation No.481.

Learned counsel for the appellant has argued that the plaintiff had not challenged the sale deed dated 17.06.1983 executed by Ratti Ram @ Ratia in favour of defendant. He has sought injunction on the basis of his possession and the first Appellate Court has set aside the finding of the Civil Judge (Junior Division), Kaithal without appreciating the aspect that plaintiff is recorded to be owner in possession of the suit land in the revenue record.

The submission of learned counsel for the appellant finds no support from the revenue record i.e. copy of jamabandi for the year 2003-04 (Ex.P1) placed on record. As per the jamabandi, the suit land is recorded to be in possession of the owners and as per the submission of learned counsel for the appellant-plaintiff, defendant is admittedly one of the co-owner after purchase of land from share of Ratti Ram, joint owner of suit land with father of plaintiff. In the absence of any evidence, the observations of learned Civil Judge (Junior Division), Kaithal that plaintiff is recorded to be in possession of the suit land in the revenue record are erroneous.

On the other hand, defendant in order to prove his possession

examined Bachna Ram, Lamberdar besides himself as DW2 and had placed

on record copy of the sale deed dated 17.06.1983 to prove his possession. It is the plaintiff, who has filed the suit and onus was on him to prove his possession over suit land. He cannot take benefit of any deficiency or lacuna in the evidence led by the defendant. The sweeping observations made by learned Civil Judge (Junior Division) that no possession was delivered to the defendant and the sale deed was bad for deficient consideration, are unsustainable, erroneous and not based on any evidence on record. These observations of learned Civil Judge is also erroneous that Ratti Ram @ Ratia being co-owner of the suit land, could not alienate the entire suit land as he was owner to the extent of only 1/2 share. Ratti Ram was owner of 1/2 share of land measuring 91 kanals 9 marlas, which find mentioned in the jamabandi on record (copy of the documentary evidence produced on file has been made available by learned counsel for the appellants during the course of arguments). The total share of Ratti Ram worked out to be 45 kanals 14 marlas. He had sold only six marlas of land, by specific khasra numbers, which is not beyond his share. In the sale deed, copy of which was placed on record as Ex.DW4/1, this fact was mentioned that possession was handed over to defendant. The suit land was recorded as *gair mumkin ruri*, as such, was not under cultivation. If the defendant has not initiated proceedings before the revenue authorities to get his name entered in the *khasra girdawari*, the same is immaterial. The first Appellate Court has not committed any error of law or fact while observing that the plaintiff has not been able to prove the plea taken by him and cannot be allowed the relief of injunction against the defendant, who is a cosharer.

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Learned Civil Judge (Junior Division), Kaithal declared the sale deed dated 17.06.1983 as illegal, null and void, on grounds as follows:-

- (i) No mutation on the basis of sale deed was sanctioned and it was never acted upon.
- (ii) Though no fraud or forgery was proved by the plaintiffs in the execution of the sale deed but the plaintiffs have been able to prove that the sale deed remained inoperative for a period of about 25 years and defendant has been sleeping over his right.
- (iii) ₹300/- was not a sufficient consideration for six marlas of land.
- (iv) Ratti Ram was not the sole owner of the suit land and legal heirs of his brother Rattan Singh were also cosharers in the suit land, therefore, he could not sell the entire suit land.

The first Appellate Court found illegality and infirmity in the findings recorded by learned lower Court and rightly so. Ratti Ram was owner of 1/2 share in the land measuring 91 kanals 9 marlas and sold only six marlas vide sale deed dated 17.06.1983. The appellants-plaintiffs had failed to prove that this sale deed was result of fraud, misrepresentation or impersonation. The observations of learned Civil Judge that the price of land mentioned in the sale deed as ₹300/- was deficient, is not supported by any evidence on record and has rightly been rejected by the first Appellate Court. Even otherwise, mere deficiency in the sale consideration was not a ground to set aside a sale until or unless fraud or misrepresentation is proved. During his life time, Ratti Ram never challenged the sale deed in favour of defendant and it was only after his death, plaintiffs filed the suit in

the year 2008 i.e. 25 years after the execution of the sale deed, challenging its legality and validity.

On perusal of the judgment of the first Appellate Court, I find no legal or factual infirmity therein calling for any interference.

No substantial question of law requiring determination arises in these appeal, which have no merits.

Dismissed.

November 26, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE

The case of plaintiff Hukma, in brief, is that land measuring 91 kanals 9 marlas of land of which six marlas of land in dispute is part, was owned by his father Rattan Singh and uncle Ratti Ram in equal shares. Both have since died and their shares in the land have been inherited by their legal heirs. Plaintiff, his mother Bhateri, brother Ajmer Singh and legal heirs of his brother Ishwar are co-owners in joint possession of the land owned by his father Rattan Singh, while the share of Ratti Ram has gone to his legal heirs. Defendant Gopi Ram is threatening to alienate the suit land and to dispossess the plaintiff and other co-sharers under the garb of sale deed dated 17.06.1983 executed by Ratti Ram @ Ratia in his favour. Plaintiff has alleged that Ratti Ram was not entitled to alienate the suit land by specific khasra numbers and the sale deed is not binding on the rights of the plaintiff and his other co-sharers.

Defendant Gopi Ram, in his written statement, claimed possession over the suit land on the basis of sale deed dated 17.06.1983 executed by Ratti Ram @ Ratia. He claiming his possession over the same, alleged that he is using the suit land by putting his cow-dung Bitora and agricultural equipments over it.