

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-251-2012(O&M)

Date of decision : 25.01.2016

Jagdev Singh and another

... Appellants

Versus

Thakur Singh and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Dr.Anmol Rattan Sidhu, Senior Advocate
with Mr. R.K. Chugh, Advocate
for the appellants.

Mr. Deepak Aggarwal, Advocate
for respondents No.1 to 4, 6 to 8.

REKHA MITTAL. J.

The present regular second appeal lays challenge to the judgment and decree dated 13.09.2011 passed by the Additional District Judge, Fast Track Court, Bathinda whereby the judgment and decree dated 06.04.2009 passed by the learned trial Court has been set aside and as a result, the suit filed by the appellants claiming ownership and possession of suit land has been dismissed.

The facts, in brief, are that the grandfather of the appellants Sh.Kartar Singh was the owner in possession of land measuring 39 kanals 19 marlas bearing khasra No.134//6(8-0), 14(8-0), 15/1(5-11), 13/5(6-4), 133/10/2(6-13), 11/1(5-11) situated at village Kalyan Sukha, Tehsil and

District Bathinda. The respondents-defendants No.1 to 3 and Kaka Singh (since deceased) sons of Bhag Singh were owners in possession of land measuring 36 kanals 11 marlas bearing khasra No.1429(3-14), 1430(10-13), 1431(5-0), 1432(6-2), 1433(11-2) situated at village Kishanpura @ Kuti, Tehsil and District Bathinda. In the year 1978, through an oral exchange, land measuring 39 kanals 19 marlas was exchanged by predecessor-in-interest of the appellants with land measuring 36 kanals 11 marlas of the respondents-defendants. The parties had taken possession of their respective land after exchange and mutations were also sanctioned in regard thereto. On the basis of said exchange, the appellants became owners in possession of 36 kanals 11 marlas of land at village Kishanpura @ Kuti and the respondents-defendants are the owners in possession of 39 kanals 19 marlas at village Kalyan Sukha.

Sh.Naranjan Singh son of Sh.Bishan Singh, co-sharer of the respondents filed an application in the year 1991 before the revenue Court for partition of land measuring 36 kanals 11 marlas received by the appellants. The revenue Court has passed an order of partition in favour of Naranjan Singh and reduced land of the appellants to the extent of 14 kanals 8 marlas out of land measuring 36 kanals 11 marlas. The appellants approached respondents No.1 to 3 and Kaka Singh and apprised them that land measuring 14 kanals 8 marlas out of 36 kanals 11 marlas of the appellants would be excluded according to Naksha Bey and the respondents agreed that if after partition, the appellants suffered a loss of

land measuring 14 kanals 8 marlas then they will give land measuring 14 kanals 8 marlas bearing khasra Nos. 134//6(0-4), 13(6-4) and 14(8-0) situated at village Kalyan Sukha to the appellants. It was also agreed that if the respondents failed to do the same, the appellants can approach the court. An agreement dated 14.07.1992 was executed between the parties. It is further averred that vide order dated 09.06.2003, sanad taksim has been issued and 14 kanals 8 marlas out of land measuring 36 kanals 11 marlas has been excluded. The respondents failed to honour their commitment made vide agreement dated 14.07.1992.

The respondents-defendants filed the written statement admitting the factum of exchange but, in turn, raised legal objections regarding maintainability of the suit; the suit being barred by Order 2 Rule 2 CPC, principle of res judicata; and under Order 7 Rule 1(i) CPC; suit being barred by limitation, not being properly valued for the purpose of court fee and jurisdiction and locus standi of the appellants to file the suit. On merits, it is averred that the respondents are absolute owners in actual possession of the suit land along with other land which was given in exchange by Kartar Singh, grandfather of the appellants. The factum of oral exchange between Kartar Singh and the answering respondents No.1 to 3 and Kaka Singh, predecessor-in-interest of respondents No.4 to 8 has been admitted. The oral exchange was effected more than 25 years back and the respondents are not liable to make good any adverse affect of the said exchange. They have denied that respondents No.1 to 3 and Kaka

Singh executed the alleged agreement with the averments that the same is a forged and fabricated document. It is further averred that the respondents cannot be held liable for any land excluded from share of the appellants by the revenue authorities in the alleged partition proceedings.

The controversy between the parties led to framing of following issues by the learned trial Court:-

- 1. Whether the plaintiffs are entitled to declaration, possession and permanent injunction as prayed for?OPP*
- 2. Whether the suit of the plaintiff is time barred?OPD*
- 3. Whether the suit is barred by Order 2 Rule 2 CPC and principle of res judicata?OPD*
- 4. Whether the plaintiffs have no cause of action and locus standi to file the present suit?OPD*
- 5. Relief.*

Jagdev Singh, one of the appellants appeared in the witness box and they examined Surjit Singh Sohi, Advocate PW2 and Bhajan Singh PW3.

To rebut evidence of the appellants, one of the respondent Balwinder Singh appeared as a witness and they examined Rana Bansal DW2, Handwriting and Fingerprints Expert.

The learned trial Court answered issue No.1 in favour of the appellants and other issues were decided against the respondents and eventually, the suit filed by the appellants was decreed with costs. The appellants were declared to be owners of land measuring 14 kanals 8

marlas situated in village Kalyan Sukha, Tehsil and District Bathinda and held entitle to possession of the said land. The respondents were restrained from alienating any portion of suit land to any person except in due course of law.

The judgment and decree passed by the learned trial Court was impugned in appeal filed by respondents No.1 to 7. The appeal was accepted by the Additional District Judge, Fast Track Court, Bathinda, reversed the judgment and decree passed by the trial Court and the suit of the appellants was ordered to be dismissed with costs.

Feeling dissatisfied with the judgment passed by the Court in appeal, the present regular second appeal has been preferred by the appellants-plaintiffs.

Counsel for the appellants would contend that indisputably, there was oral exchange between Kartar Singh, grandfather of the appellants and respondents No.1 to 3 and Kaka Singh and the said oral exchange was followed by delivery of possession of exchanged land which was duly given effect to in the revenue records by way of sanction of mutations. It is further argued that as the appellants lost 14 kanals 8 marlas out of land measuring 36 kanals 11 marlas received in exchange from the respondents, the appellants can seek restoration of land to the extent of their loss that happened in the partition proceedings initiated by one Naranjan Singh. It is further argued that entitlement of the appellants to recover loss of land measuring 14 kanals 8 marlas is duly recognized by

respondents No.1 to 3 as they entered into an agreement dated 14.07.1992 whereby they agreed to make up loss of the appellants to the extent of 14 kanals 8 marlas out of land measuring 36 kanals 11 marlas. It is argued with vehemence that the appellants are entitled to ownership and possession of the suit land both on the basis of agreement dated 14.07.1992 as well as in view of the provisions of section 119 of the Transfer of Property Act (in short 'TPA').

Counsel has further argued that the appellants were not required to file a suit seeking specific performance of the agreement dated 14.07.1992 and they can maintain a suit for declaration of ownership and possession of the suit land. In support of his contention, he has referred to judgment of Full Bench of Pre Independent Era ***Hari Tiwari and others Vs. Raghunath Tiwari and another, 11 A. 27 (F.B.) = 8 A.W.N.(1888) 8254.***

Counsel for the respondents has urged that the appellants cannot seek recourse to provisions of Section 119 T.P.A. as the provisions of T.P.A. except Sections 54, 107 and 123 have not been made applicable to the State of Punjab. According to counsel, only those provisions of the T.P.A. would be applicable to a particular State in regard whereof a specific notification has been made by that State. The second submission made by counsel is that though the agreement dated 14.07.1992 propounded by the appellants has not been proved in accordance with law but even otherwise, the appellants could only seek specific performance

of the said agreement in case of breach thereof by the respondents but the agreement cannot form the basis for seeking declaration of ownership of land. To support the plea, it is urged that the agreement cannot be relied upon for claiming transfer of ownership in immovable property for want of registration in view of the provisions of Section 17 of the Indian Registration Act.

I have heard counsel for the parties and perused the records.

The substantial questions of law that arise for adjudication are:-

1. Whether the appellants can seek any relief by invoking the provisions of Section 119 of the Transfer of Property Act.

2. If question No.1 is answered in the negative, whether the appellants can seek declaration of ownership and claim possession of the suit land on the basis of agreement dated 14.07.1992.

On a pointed query raised by the Court to counsel for the appellants, if Chapter VI of the Transfer of Property Act dealing with exchanges is applicable to the State of Punjab, he failed to bring to the notice of the Court any such notification issued by the State of Punjab whereby the provisions of Sections 118 to 121 have been made applicable to the State of Punjab. On the contrary, I could lay my hands on certain judgments passed by this Court ***Hardit Singh Vs. Gulzara Singh and***

another, 1973 PLJ 329, Sardara Singh and another Vs. Harbhajan Singh and others, 1974 PLJ 341, Sewa Singh Vs. Joginder Singh, 1986 PLJ 113 wherein it has been held that oral exchange is permissible in Punjab. Provisions of Section 118 regarding exchange have not been applicable to the State of Punjab. It has also been held that T.P.A. does not apply to Punjab and only Sections 54, 107 and 123 of the Act have been made applicable w.e.f. 01.04.1955. In view of the above that provisions contained in Chapter VI of the T.P.A. have not been made applicable to the State of Punjab, I am afraid if the appellants can seek aid of Section 119 of T.P.A. to claim the land in question on the premise that they have lost land measuring 14 kanals 8 marlas in the partition proceedings initiated by one Naranjan Singh.

This brings the Court to the second issue if the appellants can claim ownership and possession on the basis of agreement Ex.P1 without seeking specific performance of the said agreement. Had the appellant been held entitled to recover the suit land by invoking the provisions of Section 119 of the T.P.A., the appellants' contention that they were not required to file a suit for specific performance on the basis of agreement dated 14.07.1992 by relying upon the judgment in *Hari Tiwari and others' case (supra)* would have been worth consideration. As has been noticed hereinbefore, the appellants are not entitled to get benefit of the provisions of Section 119 of the T.P.A. as Chapter VI of the T.P.A. is not applicable to the State of Punjab. The agreement dated 14.07.1992 is not

a registered document. There is no dispute that no transfer of immovable property of a value more than ₹100/- is legally permissible except by way of a registered document. That being so, claim of the appellants in regard to ownership of the suit land on the basis of agreement dated 14.07.1992 is not tenable. The appellants, at best, could file a suit seeking specific performance of the agreement within the stipulated period of limitation but they have failed to do so. The present suit for declaration on the basis of agreement was filed in the year 2003, more than 10 years after the alleged agreement dated 14.08.1992 was executed by respondents No.1 to 3. In view of the above, both the questions are answered against the appellants and in favour of the respondents.

In view of what has been discussed hereinabove, the appeal sans merit and is accordingly dismissed leaving the parties to bear their own costs.

(REKHA MITTAL)
JUDGE

January 25, 2016.
Davinder Kumar