

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

**RSA No.2883 of 2013 (O&M)
Date of Decision.08.09.2016**

Gurcharan SinghAppellant

Vs.

Kuldeep Singh and othersRespondents

2. RSA No.2073 of 2015

Kuldeep SinghAppellant

Vs.

Ramtej Singh and othersRespondents

Present: Mr. Manish Kumar Singla, Advocate
for the appellant in RSA No.2883 of 2013 and
for respondent No.3 in RSA No.2073 of 2015.

Mr. L.S. Sidhu, Advocate
for the appellant in RSA No.2073 of 2015 and
for respondent No.1 in RSA No.2883 of 2013.

Mr. Amit Kumar Jain, Advocate
for respondent No.3 in RSA No.2883 of 2013 and
for respondent No.2 in RSA No.2073 of 2015.

Ms. Alisha Soni, Advocate
for respondent Nos.2 and 4 in RSA No.2883 of 2011 and
for respondent No.1 in RSA No.2073 of 2015.

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AMIT RAWAL J. (ORAL)

C.M. No.5413-C of 2015 in RSA No.2073 of 2015

For the reasons stated in the application, delay of 2 days in filing
the appeal is condoned.

Application is allowed.

C.M. No.5414-C of 2015 in RSA No.2073 of 2015

For the reasons stated in the application, delay of 490 days in
refiling the appeal is condoned.

Application is allowed.

RSA Nos.2883 of 2013 and RSA No.2073 of 2015

This order of mine shall dispose of two regular second appeals arising out of Civil Suit No.176 of 2006 titled as “Kuldeep Singh Vs. Ramtej Singh and others” wherein sale deed dated 05.07.1999 has been set aside to the extent of 5 kanals 10 marlas of land whereas sale deed dated 02.05.2005 regarding 8 kanals 18 marlas has been upheld. RSA No.2883 of 2013 is at the instance of defendant No.3 whereas RSA No.2073 of 2015 is at the instance of the plaintiff.

In RSA No.2883 of 2013, Mr. Manish Kumar Singla, learned counsel appearing on behalf of the appellant-defendant No.3 submits that Kuldeep Singh son of Ramtej Singh instituted the aforementioned suit on 28.08.2006 challenging both the aforementioned sale deeds on the premise that the property in the hands of his father Ramtej Singh was ancestral in nature and in this regards, he submits that certain documentary evidence i.e. Ex.P4 and P5 have been brought on record but the fact remains that the land/property which has been acquired from the ancestors i.e. three generations in lineage is only 5 kanals 10 marals of land whereas the sale deed dated 05.07.1999 is with regard to 250/7033 share, which comes to 27 kanals 3 marlas. The share is of Ramtej Singh and Mithu Singh, both brothers. The sale deed was executed by Ramtej Singh, who was arrayed as defendant No.1 and Mithu Singh & Nihal Kaur, who have not been impleaded as parties. In fact, Ramtej Singh was holding a larger chunk of land. It is yet to be determined whether the khasra numbers, rectangular or killa numbers mentioned in copy of jamabandi, Ex.P4, would form part of the sale deed or not as mutation does not reflect the khasra numbers. It is only the area which was mentioned. Without determination of the same, the

10 marlas. Neither the pedigree table nor the excerpt has been placed on record except mutation. Though the mutation prescribes the pedigree table but in view of the reasons aforementioned, the Courts below ought not to have dismissed the suit qua sale deed dated 02.05.2005, thus, urges this Court for setting aside the judgments and decrees passed by the Courts below by formulating the substantial questions of law as drawn in the memorandum of appeal.

The ratio decidendi culled out in the judgment of Hon'ble Supreme Court in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others (2001) 4 SCC 262** wherein it had been held that provisions of Section 41 of the Punjab Courts Act would not be applicable and the appeals would uniformly be filed under Section 100 CPC by formulating the substantial questions of law, is no longer a good law in view of the ratio decidendi culled out in the judgment of Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, in essence, the appeals are now treated to be filed under Section 41 of the Punjab Courts Act and therefore, facts/evidence can be re-appreciated without formulation of substantial questions of law.

Mr. L.S. Sidhu, learned counsel appearing for the appellant-plaintiff in RSA No.2073 of 2015 submits that the sale deed dated 02.05.2005 executed in favour of defendant No.2 by Ramtej Singh is also ancestral property. The Courts below have misread and misconstrued the oral and documentary evidence. Once it has been proved that the property/land measuring 5 kanals 10 marlas in the hands of Ramtej Singh came from his forefathers i.e. three generations in lineage, the plaintiff, being the fourth generation has a right by birth and therefore, the sale deed

as the defendants have failed to prove on record any legal necessity. Kuldeep Singh, plaintiff, was born from the loins of first marriage between Ramtej Singh and Ranjit Kaur. The concurrent finding of fact viz-a-viz partly allowing the suit cannot be interfered with unless and until there is gross illegality and perversity. Once it has been proved through Ex.P5 that the land measuring 5 kanals 10 marlas is ancestral, rightly so, the aforementioned sale deed dated 05.07.1999 has been set aside, thus, urges this Court for dismissal of RSA No.2883 of 2013 and allowing of RSA No.2073 of 2015.

Mr. Amit Kumar Jain, learned counsel appearing for respondent No.3 submits that the sale deed in respect of his client i.e. sale deed dated 02.05.2005 vide which land measuring 8 kanals 18 marlas has been sold by Ramtej Singh on the basis of mutation No.2219 reflecting inheritance of property to Ramtej Singh by Mukhtiar Singh vide Will dated 06.01.1997 and therefore, could not be remotely said to be ancestral in nature, rightly so, the Courts below declined to interfere with regard to the aforementioned sale deed, thus, urges this Court for dismissal of the RSA No.2073 of 2015.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submission of Mr. Sidhu viz-a-viz RSA No.2073 of 2015, for, Ex.P4, reveals that Ramtej Singh inherited the property measuring 5 kanals 10 marals. It is the conceded position that he along with his brother was holding a larger chunk of land and it was yet to be determined that unless and until the property amongst Ramtej Singh and his brothers not partitioned, whether the killa numbers/rectangular numbers, though not mentioned in Ex.P4, would be conforming with the sale deed aforementioned or not. It was too premature

been able to connect the description of the property in mutation Ex.P4 with the sale deeds. As noticed above, the sale deed in favour of the plaintiff is in respect of 27 kanals 3 marlas and in respect of defendant No.2, 8 kanals 18 marlas. Thus, in my view, the finding rendered by the Courts below with regard to setting aside of the sale deed to the extent of 5 kanals 10 marals is not justifiable and sustainable. I am in agreement with the finding rendered by the Courts below as the killa numbers reflected in the sale deed dated 02.05.2005 in respect of land measuring 8 kanals 18 marlas has come to the share of Ramtej Singh on the basis of Will dated 06.01.1997. It cannot be remotely connected and to be termed as ancestral in nature. In my view, Kuldeep Singh, respondent-plaintiff could not stake claim until and unless, there was a partition amongst the co-sharers.

For the reasons aforementioned, I am of the view that judgment and decree rendered by the Courts below setting aside the sale deed dated 05.07.1999 with regard to 5 kanals 10 marlas of land is unsustainable in the eyes of law and hereby set aside. The suit of the plaintiff is dismissed in toto and finding regarding upholding of the sale deed dated 02.05.2005 is affirmed. Resultantly, the second appeal bearing No.2883 of 2013 is allowed and regular second appeal bearing No.2073 of 2015 is dismissed.

(AMIT RAWAL)
JUDGE

September 08, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No