

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.M. No. 6741-42-C of 2014 &
RSA No. 2644 of 2015

Date of decision: January 13, 2016

Hira Singh

...APPELLANT

Versus

Balwinder Singh and others

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Prateek Sodhi, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J.

C.M. No. 6742-C of 2015

Present is an application for correction in the Memo of Parties, wherein it has been stated that Kunan Singh @ Kundan Singh, who was arrayed as defendant No. 4 and proceeded against ex-parte by the trial Court, expired during the pendency of the suit on 20.08.2008. An application under Order 22 Rule 4 was filed before the Lower Appellate Court (Annexure A1), which was allowed vide order dated 21.11.2012 (Annexure A2) but inadvertently, due to a typographical error, legal representatives were not mentioned in the Memo of Parties although in the order, presence of the counsel for the legal representatives has been marked.

On this basis, prayer has been made for amending the Memo of Parties in the present appeal.

For the reasons mentioned in the application, which is duly supported by the affidavit of the appellant, the present application is allowed and the amended Memo of Parties is taken on record. Registry is directed to place the same at the appropriate stage of the case.

RSA No. 2644 of 2015

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Ajnala dated 11.03.2011, whereby the suit for declaration to the effect that the plaintiff (appellant herein) is owner in possession of the land measuring 8 Kanals bearing qilla No. 17/15 khata and khatani No. 90/200 as entered in the Jamabandi for the year 2002-2003 situated in Village Kollowal, Tehsil Ajnala, District Amritsar and the respondents-defendants have no right, interest or title in the same in any manner whatsoever and for permanent injunction restraining the defendants from interfering in possession of the appellant-plaintiff in the land in question and in the alternative, suit for possession and further alternatively suit for recovery of ₹ 1,75,000/- is partly decreed as far as recovery of ₹ 1,75,000/- against respondent No. 4-defendant No. 4 Kunan Singh @ Kundan Singh, whereas the remaining reliefs claimed stands dismissed, appeal against which preferred by the appellant-plaintiff stands dismissed by the Additional District Judge, Amritsar by order dated 18.12.2014.

2. It is the contention of the learned counsel for the appellant that the appellant-plaintiff is a bona fide purchaser of the suit land as prior to purchasing the suit land vide sale deed dated 16.11.2000, he had checked the revenue records, according to which the ownership and possession was

shown to be that of respondent No. 4-defendant No. 4-Kundan Singh and accordingly, has proceeded to purchase the said land. He contends that the finding, thus, recorded by the Courts below that the appellant is not a bona-fide purchaser, cannot sustain. He contends that the sale deed dated 25.09.1997 in favour of respondents-defendants No. 1 to 3 as executed by respondent-defendant No. 4-Kundan Singh is a forged and fabricated document as per the stand of the respondent-defendant No. 4-Kundan Singh as well and, therefore, the said document cannot be said to be conferring any title upon the respondents-defendants No. 1 to 3. Assertion has also been made that on the basis of the evidence of the expert witness PW4 Sanjeev Sharma, who had compared the thumb impressions of Kundan Singh on the sale deed dated 25.09.1997 Ex. D1 with the other standard thumb impressions, found the said thumb impressions to be not of Kundan Singh, thus, the said sale deed could not have been said to be a genuine document rather a forged one. The findings, thus, recorded by the Courts below, cannot sustain and deserve to be set aside. Prayer has, thus, been made for allowing the present appeal by setting aside the impugned judgments and decreeing the suit of the appellant-plaintiff.

3. I have considered the submissions made by the learned counsel for the appellant and with his able assistance, have gone through the impugned judgments.

4. Dealing with the validity of the sale deed dated 25.09.1997, as executed by Kundan Singh-respondent No. 4-defendant No. 4 in favour of respondents-defendants No. 1 to 3, whereby land measuring 18 Kanals 19 Marlas was purchased by them from Kundan Singh for a consideration of ₹ 1,26,500/-, suffice it to say that the onus was upon the defendant No. 4-

Kundan Singh to prove that the said sale deed was a forged and fabricated one but unfortunately, he, after filing the written statement, absented himself from the proceedings of the Court and did not lead any evidence and thus, was proceeded against ex-parte. Had it been a forged and fabricated sale deed, as has been asserted by Kundan Singh, proceedings should have been initiated by him challenging the said sale deed either in the form of a civil suit or by initiating criminal proceedings against the respondents-defendants No. 1 to 3 which he has not. The evidence, which has been led by the respondents-defendants No. 1 to 3, proves the due execution of the sale deed by respondent No. 4-defendant No. 4-Kundan Singh. The attesting witness DW2 Sukhdev Singh, Ex-Sarpanch, categorically stated that he personally knew Kundan Singh who sold land measuring 18 Kanals 19 Marlas to defendants No. 1 to 3 vide sale deed dated 25.09.1997 and Kundan Singh thumb marked the sale deed after accepting its contents to be correct. The sale deed was further presented before the Sub-Registrar, who again read over its contents and Kundan Singh again thumb marked the sale deed Ex. D1.

5. As regards the contention of the learned counsel for the appellant with regard to the report of the expert witness Sh. Sanjeev Sharma PW4 and his evidence is concerned, the same has been considered where although he had stated that the thumb impressions on the sale deed dated 25.09.1997 do not match with the standard thumb impressions of Kundan Singh which he had taken for comparison from the vakalatnama, written statement and the affidavit but in the light of the fact that Kundan Singh has been proceeded against ex-parte and there being no evidence to the effect that these thumb impressions were that of Kundan Singh himself, the same

could not have been taken as standard thumb impressions especially when no person has been produced to prove that the standard thumb impressions taken on the written statement and affidavit were that of Kundan Singh. The finding recorded by the Courts below with regard to the evidence of the Fingerprint Expert, cross-examination of whom has been re-produced by the learned Lower Appellate Court, clearly indicates that his evidence cannot be relied upon because he has stated that “it is correct that except the core point I did not mark any points of ridge characteristic in standard thumb impressions marked S1, S2 and S6. Vol.” He, in the cross-examination, further admitted that he did not compare thumb impressions of Kundan Singh on the sale deed dated 16.11.2000 Ex. P1 in favour of the appellant-plaintiff and registered mortgage deed dated 04.10.1999 in the file titled as Kulwant Singh vs. Balwinder Singh with the thumb impressions on the sale deed dated 25.09.1997 Ex. D1. No reason has been assigned by him for not taking these thumb impressions as standard thumb impressions, which were very authentic registered documents. The findings, thus, recorded by the Courts below, on this count, cannot be faulted with.

6. As regards the contention of the learned counsel for the appellant that the appellant is a bona-fide purchaser and, therefore, would be protected by the exception as carved out in Section 41 of the Transfer of Property Act but the said contention cannot be accepted, firstly, a suit was filed by Kulwant Singh on the basis of an agreement/compromise alleged to have been executed by Kundan Singh-respondent No. 4-defendant No. 4 in his favour, which was dismissed on 11.03.2011 and the appeal preferred against that judgment stands dismissed. Kundan Singh is related to the plaintiff as in the cross-examination, he has admitted that his wife is

daughter of Kulwant Singh and Daljit Kaur, other daughter of Kulwant Singh, is married to Kuldeep Singh son of Kundan Singh-respondent No. 4-defendant No. 4, so sister of plaintiff's wife is married to son of defendant No. 4, which clearly depicts their close relationships. In these circumstances, it is difficult to believe that the appellant-plaintiff was not knowing about the sale deed dated 25.09.1997 executed by Kundan Singh in favour of respondents-defendants No. 1 to 3. It would not be out of way to mention here that the plaintiff, in his cross-examination, admitted that respondents-defendants No. 1 to 3 are in possession of the suit land. This clearly falsifies the claim of the appellant-plaintiff with regard to he being in possession of the suit land.

7. Further had the sale deed dated 25.09.1997 been the forged and fabricated document, as asserted by defendant No. 4-Kundan Singh, he would not have permitted the possession of the land to be taken by respondents-defendants No. 1 to 3 in pursuance to the said sale deed. Merely because the respondents-defendants No. 1 to 3 had not got the mutation sanctioned in their favour in pursuance to the sale deed dated 25.09.1997, the plaintiff took advantage of the situation and got executed the sale deed dated 16.11.2000 Ex. D1 from Kundan Singh, being his close relative, for setting up of a false claim through the present suit. The truth stands exposed and, therefore, the Courts have rightly come to the conclusion that the appellant is not a bona-fide purchaser of the suit land.

8. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below.

Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

9. In view of the above, finding no merit in the present appeal, the same stands dismissed.

C.M. No. 6741-C of 2014

In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

January 13, 2016

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**