

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

R.S.A No.4878 of 2015(O&M)

Date of decision : 24.05.2016

Manjit Singh

..... Appellant

Versus

Kuldip Kaur and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. V.Ram Swaroop, Advocate
for the applicant-appellant.

1. **Whether Reporters of Local papers may be allowed to see the judgment?Yes.**
2. **To be referred to the Reporters or not?Yes.**
3. **Whether the judgment should be reported in the Digest?Yes.**

DARSHAN SINGH,J

CM No. 6221-C of 2016

This application has been filed for preponing of the appeal.

Heard.

For the reasons mentioned in the application, the present application stands allowed and the appeal is taken up today itself.

CM No. 12859-C of 2015

This application has been filed for placing on record documents Annexures A-1 to A-20.

Heard on the application.

For the reasons mentioned in the application, the application stands allowed and the documents Annexures A-1 to A-20 are taken on record subject to just objections of the opposite party.

R.S.A No. 4878 of 2015(O&M)

The present appeal has been preferred by appellant-defendant no.5-Manjit Singh against the judgment and decree dated 28.07.2015 passed by learned Additional District Judge, Jalandhar, whereby the appeal filed by the appellant against the judgment and decree dated 20.01.2012 passed by the learned Civil Judge (Senior Division), Jalandhar, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Plaintiff-respondent no.1 Kuldip Kaur has filed the suit for declaration that the sale deed dated 31.05.2005 executed by defendants no.2 to 4 in favour of appellant-defendant no.5 on the basis of the alleged sale deed dated 01.08.2001 being legal heirs of Raghbir Singh with respect to the shop which is portion of house No. 1142/1143 comprised in Khasra Nos. 1870/1733, 1869/1733 situated at Dakoha, Tehsil and District Jalandhar is illegal, null and void and is liable to be set aside. Plaintiff has also challenged the power of attorney dated 09.06.2000 allegedly executed by plaintiff in favour of defendant no.1. In the consequential relief, she sought the relief of possession of the shop in dispute along with the recovery of Rs. 2,16,000/- on account of the *mesne* profit for use and occupation of the shop in dispute w.e.f. 26.10.2004 to 25.10.2007 along with interest.

4. As per the case of the plaintiff, she is owner of the property no. 1142/1143 situated at Dakoha, Tehsil and District Jalandhar. Defendant no.1 Gursharan Kaur is the real sister of husband of the

plaintiff. Surinder Singh, the husband of defendant no.1 along with one Surinder Singh hatched criminal conspiracy and fabricated the power of attorney dated 09.06.2000 in favour of defendant no.1 Gursharan Kaur. The said power of attorney is false, forged and fabricated document. The same was never executed by plaintiff neither it bears her signatures/thumb impressions. She never authorized defendant no.1 to execute the sale deed dated 01.08.2001 in favour of Raghubir Singh, the predecessor-in-interest of defendants no.2 to 4. That the legal heirs of Raghubir Singh has further executed the sale deed dated 31.05.2005 in favour of defendant no.5-Manjit Singh (appellant) on the basis of the said sale deed dated 01.08.2001. The sale deed dated 31.05.2005 is result of fraud as Raghubir Singh was neither owner nor having any right in the disputed property. The appellant-defendant no.5 took the possession of the disputed property forcibly and illegally on 31.05.2005. It is further pleaded that a criminal case bearing FIR No. 243 dated 12.12.2000, under Sections 420, 465, 467, 471 IPC was registered against the defendants and other persons on account of committing forgery as the alleged power of attorney was never executed by the plaintiff. The same is false, forged and fabricated document. Hence, the suit.

5. The suit has been contested by the defendants by filing the separate written statements. Defendants no.1 to 4 pleaded that plaintiff has appointed defendant no.1 Gursharan Kaur as her power of attorney, which was duly registered at Amritsar authorizing defendant no.1 to deal with the suit property in the manner she likes. The said power of attorney is legal and genuine and plaintiff is estopped to claim that the said

document does not bear her signatures/thumb impressions. It was further pleaded that defendant no.1 executed the sale deed in favour of Raghubir Singh on the basis of legal and valid power of attorney dated 09.06.2000. After the demise of Raghubir Singh, his legal heirs had transferred the suit property to defendant no.5 after getting permission from the Court Guardian. The sale deed executed by defendant no.1 in favour of Raghubir Singh and the sale deed executed by his legal heirs in favour of appellant-defendant no.5 are legal and valid.

6. Appellant-defendant no.5 also filed the separate written statement contesting the suit on the grounds *inter alia* that he is the *bona fide* purchase for valuable consideration without any notice of any litigation between plaintiff-Kuldip Kaur and Gursharan Kaur and others. He has been in possession of the disputed property since the date of execution of the sale deed dated 31.05.2005. All other averments raised in the plaint were controverted. Thus, the defendants pleaded for dismissal of the suit.

7. Plaintiff filed replication to the aforesaid written statement controverting the pleas raised therein. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether sale deed dated 31.05.2005 executed by defendants no.2 to 4 in favour of defendant no.5 on the basis of sale deed dated 01.08.2001 is illegal, null and void?OPP
2. Whether sale deed dated 01.08.2001 is result of fraud and not binding qua the rights of plaintiff?OPP
3. Whether power of attorney dated 09.06.2000 is forged and fabricated document?OPP
4. Whether plaintiff is entitled to recover possession from defendant no.5?OPP

5. Whether plaintiff is entitled to recovery of Rs. 2,16,000/- being mesne profits along with future interest @12% from filing of suit till its realization?OPP
6. Whether plaintiff is estopped by his own act and conduct from filing the present suit?OPD
7. Whether plaintiff had appointed Gursharan Kaur as her attorney?OPD
8. Whether defendant no.5 is bonafide purchase of suit property? OPD
9. Relief.

8. On appreciation of evidence on record and contentions raised by learned counsel for the parties, the learned trial Court decree the suit filed by the plaintiff-respondent no.1. Plaintiff-respondent no.1 was declared owner of the disputed property. The sale deed dated 31.05.2005 executed by defendants no.2 to 4 in favour of defendant no.5 and sale deed dated 01.08.2001 executed by defendant no.1 were declared illegal, null and void and were set aside. The power of attorney dated 09.06.2000 was also declared as a forged and fabricated document. Plaintiff-respondent no.1 was also granted the relief of recovery of possession of the disputed property from the appellant along with *mesne* profits.

9. Appellant-defendant no.5 Manjit Singh preferred the appeal against the aforesaid judgment and decree passed by the learned trial Court, which has also been dismissed by the learned First Appellate Court vide impugned judgment and decree dated 28.07.2015. Hence, this Regular Second Appeal.

10. I have heard Mr. V.Ram Swaroop, Advocate, learned counsel for the appellant and have carefully gone through the paper book.

11. Initiating the arguments, learned counsel for the appellant

contended that the suit of the plaintiff was barred by the provisions of Order 2 Rule 2 of the Code of Civil Procedure, 1908 (for short CPC). He contended that even at the time of filing the previous suit titled as 'Kuldip Kaur Vs. Sharanjit Singh and Gursharan Kaur', the plea to challenge the sale deed dated 01.08.2001 was available to plaintiff. But, she has omitted to challenge the said sale deed. So, the present suit, which is a subsequent suit is barred under Order 2 Rule 2 CPC and is not maintainable.

12. He further contended that appellant-defendant no.5 Manjit Singh is a *bona fide* purchaser with consideration and without any notice of the litigation pending between Kuldip Kaur and other defendants. He contended that the appellant has made the *bona fide* inquiry with respect to the title of the defendants no.2 to 4 before the purchase of shop in dispute. He has checked the revenue record. There was no entry regarding any pending litigation. He has no knowledge with respect to the pendency of any litigation between Kuldip Kaur and Gursharan Kaur. He has also obtained the possession of the suit property by dint of the sale deed dated 31.05.2005. Thus, he is proved to be the *bona fide* purchase of the suit property.

13. He further contended that the plaintiff and defendants no.1 to 4 are closely related to each other. In-fact, they had committed fraud with the appellant by way of collusion. Plaintiff has compromised with Gursharan Kaur in the criminal case, which shows that they were in collusion with each other. Thus, he contended that the learned Courts below have erroneously ignored the aforesaid factual and legal position

and the impugned judgment and decrees are unsustainable in the eyes of law.

14. I have duly considered the aforesaid contentions.

15. Annexure A-1 is the copy of the plaint in the previous suit no. 369/2004 titled as 'Kuldip Kaur Vs. Sharanjit Singh and Gursharan Kaur'. The said suit has been filed by plaintiff-Kuldip Kaur for vacant physical possession of shop-cum-plot being part of the property measuring 1142/1143 along with recovery of Rs. 1,48,000/- on account of damages for illegal and unauthorized use and occupation. In the said suit, the plaintiff has challenged the power of attorney dated 09.06.2000 and the sale deed executed on 12.06.2000 and got registered on 14.06.2000 by Gursharan Kaur in favour of Sharanjit Singh.

16. Order 2 Rule 2 CPC reads as under:-

2. Suit to include the whole claim.-

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

17. The object of the aforesaid provision is that defendants should not be vexed twice for one and the same cause of action. This rule

has been directed against two evils i.e. the splitting of claims and splitting of the remedies. It provides that if a plaintiff omits any portion of the claim which he is entitled to make or any of the remedy which he is entitled to claim in respect of the cause of action for his suit, he shall not thereafter sue for the portion claimed or the remedy so omitted. This rule does not preclude a second suit based on a distinct and separate cause of action.

18. In order to invoke Order 2 Rule 2 CPC, two conditions must be satisfied. First, the previous suit and the present suit must arise out of the same cause of action. Secondly, both the suits must be between the same parties. To support this view, reference can be made to case **M.Thimma Raju and another vs. Dronamraju Venkatakrishna Rao and another AIR 1978 A.P. 385**. The same legal position has been reiterated by the Hon'ble Himachal Pradesh High Court in case **Smt. Nirmala Vs. Hari Singh 2001(4) R.C.R (Civil) 308**. Even in case **State Bank of India Vs. Gracure Pharmaceuticals Ltd. 2014(1) R.C.R (Civil) 889**, the Hon'ble Apex Court has observed that the suit is to include the whole claim. If the plaintiff is entitled to seek reliefs against the defendant in respect of the same cause of action. This pronouncement of the Hon'ble Apex Court also indicates that Order 2 Rule 2 CPC shall be applicable where the suit has been filed by the plaintiff against the same defendant. But, in the instant case, defendants no.2 to 5 were not the party to the civil suit no. 369 of 2004.

19. The previous suit was based on totally distinct and separate cause of action. In that suit the plaintiff has challenged the sale deed

executed on 12.06.2000 and got registered on 14.06.2000 by defendant no.1 Gursharan Kaur in favour of Sharanjit Singh. Whereas, in the instant case, the plaintiff has filed the suit to challenge the sale deed dated 31.05.2005 executed by defendants no.2 to 4, the legal heirs of Raghubir Singh in favour of the appellant, which has been executed on the basis of the sale deed dated 01.08.2001 executed by defendant no.1 Gursharan Kaur in favour of Raghubir Singh. The sale deed dated 31.05.2005 challenged in the present suit came into existence during the pendency of the previous suit no.369 filed on 24.07.2004. Thus, even the cause of action to challenge the sale deed dated 31.05.2005 had not occurred at the time of filing the previous suit. The remedy to challenge the sale deeds dated 01.08.2001 and 31.05.2005 were not available to the plaintiff in the previous suit in respect of the cause of action in the previous suit filed by her against Gursharan Kaur and Sharanjit Singh. Moreover, the sale deed dated 31.05.2005 was not even in existence at the time of filing the previous suit.

20. The Hon'ble Apex Court in case **Coffee Board Vs. M/s Ramesh Exports Pvt. Ltd. 2014(3) R.C.R (Civil) 104** has laid down that there should be specific plea in the written statement with respect to the bar of Order 2 rule 2 CPC and the specific issue should have been framed in that regard. The pleadings of the earlier suit must have been examined and plaintiff should be given an opportunity to demonstrate that cause of action in the subsequent suit was different. But, admittedly, in the instant suit, no specific issue was framed by the learned trial Court with respect to the applicability of Order 2 Rule 2 CPC nor said issue was ever

claimed to be framed by appellant-defendant at any stage of proceedings. Thus, due to the distinct and separate cause of action and parties, the provisions of Order 2 Rule 2 CPC are not applicable.

21. I also do not find any substance in the plea raised by appellant that he is the *bona fide* purchase of the suit property. This fact is not disputed that the power of attorney dated 09.06.2000 allegedly executed by plaintiff in favour of defendant no.1 was declared illegal. In the previous suit no.369/2004 titled as 'Kuldip Kaur Vs. Sharanjit Singh and Gursharan Kaur', it was held that plaintiff never executed the power of attorney dated 09.06.2000 in favour of defendant no.1. The said findings of the trial Court was affirmed by the learned Appellate Court vide judgment and decree dated 20.08.2010 copy Ex.PA and PB and by this Court vide judgment dated 04.02.2011 copy Ex.PC. So, the findings that the power of attorney dated 09.06.2000 was illegal and invalid has attained finality. The sale deed dated 01.08.2001 has been executed by defendant no. 1-Gursharan Kaur in favour of Raghubir Singh, the predecessor-in-interest of defendants no.2 to 4 on the basis of the said power of attorney, which has already been declared illegal and invalid. So, the said sale deed dated 01.08.2001 does not convey any right, title or interest in favour of Raghubir Singh, the predecessor-in-interest of defendants no.2 to 4 with respect to the property in dispute. It is further an admitted fact that the present appellant has purchased the property in dispute vide registered sale deed dated 31.05.2005 from defendants no.2 to 4 on the basis of the sale deed dated 01.08.2001, which was based on the illegal power of attorney dated 09.06.2000.

22. The appellant has claimed himself to be the *bona fide* purchase of the suit property with consideration and without any notice of any litigation between plaintiff and defendant no.1. In order to succeed in the plea of *bona fide* purchaser under Section 41 of the Transfer of Property Act, 1882 (for short Act), the appellant was required to establish that transferors were ostensible owners; secondly, that they were so with the consent expressed or implied on the real owner; thirdly, that the transfer is for consideration and fourthly that the transferee has acted in good faith taking reasonable care to ascertain that transferrer has power to transfer. The power to transfer includes the competency to convey the valid title.

23. There is no material on record to show that Raghubir Singh, the predecessor-in-interest of defendants no.2 to 4 or defendants no.2 to 4 themselves were the ostensible owners of the property in dispute with consent expressed or implied on the plaintiff, the real owner of the disputed property. Rather, the sale deed dated 01.08.2001 in favour of Raghubir Singh was based on the forged power of attorney dated 09.06.2000. This fact is also not disputed that when the appellant purchased the suit property vide sale deed dated 31.05.2005, the suit filed by the plaintiff against Sharanjit Singh and Gursharan Kaur challenging the legality and validity of the power of attorney dated 09.06.2000 was already pending. The present appellant-Manjit Singh, plaintiff-Kuldip Kaur and defendant no.1 Gursharan Kaur are residents of the same village Dakoha, Tehsil and District Jalandhar. He further deposed that he is residing at a distance of 2-3 kms from the house of

Gursharan Kaur. It is not believable that appellant was not having the knowledge about the litigation pending between plaintiff-Kuldip Kaur and Gursharan Kaur with respect to the power of attorney dated 09.06.2000. If, the appellant would made the proper inquiry, he must had come to know about the said litigation. Thus, it cannot be stated that the appellant had acted in good faith taking reasonable care to ascertain that defendants no.2 to 4 had valid title and power to transfer the suit property. Thus, the plea of *bona fide* purchaser is not available to the appellant.

24. The plea raised by learned counsel for the appellant that there was collusion between the plaintiff and defendants no.1 to 4 is totally devoid of merits. It is evident that defendant no.1 Gursharan Kaur has contested the previous suit as well as the present suit. Even, a criminal case was registered against said Gursharan Kaur and others. Learned counsel for the appellant has fairly admitted that the said criminal case has resulted in conviction. He pleaded that some compromise has taken place in that criminal case, when the matter was pending before this Court. It means, there had been civil as well as criminal litigation between plaintiff and Gursharan Kaur and others, which was hotly contested by the parties. Thus, there is nothing to conclude that there was any collusion between plaintiff and defendants no.1 to 4.

25. Thus, keeping in view my aforesaid discussion, the appellant-plaintiff has not been able to establish his plea of *bona fide* purchaser. The provisions of Order 2 Rule 2 CPC are also not applicable

to the present suit. There is no material on record to prove any collusion between the plaintiff and defendants no.1 to 4. The sale deed dated 31.05.2005 executed by defendants no.2 to 4 in favour of the appellant and the sale deed dated 01.08.2001 executed by defendant no.1 in favour of Raghubir Singh, the predecessor-in-interest of defendants no.2 to 4 have rightly been held illegal, null and void and not binding on the rights of the plaintiff and she has been rightly held with consequential relief of possession and *mesne* profits by the learned Courts below. Therefore, there is no ground to interfere with the concurrent findings recorded by the learned Courts below.

26. Resultantly, no question of law, much less, the substantial question of law arises in the present appeal.

27. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

May 24, 2016

s.khan

(DARSHAN SINGH)
JUDGE