

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No.5285 of 2015 (O&M)

Date of decision: 26.2.2016

Balkar Singh

... Appellant

versus

Darshan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.R.K.Girdhar, Advocate,
for the appellant

...

AMOL RATTAN SINGH, J. (Oral)

1. The plaintiff is in second appeal before this Court, after his suit for declaration and permanent injunction was dismissed by the learned Additional Civil Judge (Senior Division), Sri Muktsar Sahib, on 18.12.2014 and the appeal against that judgment was also dismissed on 07.07.2015 by the first appellate Court.

2. As per the facts given in the judgment of the Courts below, cited from the plaint filed by the appellant-plaintiff, land measuring 33 kanals 16 marlas, was purchased by the appellant from one Asso Devi through her son and power of attorney Gurcharan Singh, vide sale deed dated 27.02.1981. The appellant being in the Army, had appointed one Des Raj (his brother-in-law) as his attorney to manage his property. As per his case, he retired from the Army in the year 1987 and thereafter started cultivating his land. In the month of November, 2011, allegedly the

respondents-defendants started proclaiming that they were owners of the suit land and tried to dispossess the appellant-plaintiff. He is stated to have approached the revenue authorities but allegedly the record was never given to him, as, according to the appellant, the Patwari had close relations with the respondents-defendants. Finally, he got the record and after receiving the copies, he is stated to have come into knowledge that mutations qua the land had wrongly been entered in the names of the defendants.

As per the appellant, he also discovered that his attorney, Des Raj, had hatched a conspiracy with Gurcharan Singh son of Asso Devi and in connivance with each other, they had got a 'benami' sale-deed executed on 13.05.1982, in favour of the said Gurcharan Singh and also got a mutation entered on that basis, in favour of Gurcharan Singh.

3. Gurcharan Singh is stated to have died and consequently a mutation of inheritance was sanctioned in favour of his mother, Asso Devi, who thereafter allegedly got a collusive decree on 12.11.1996, in a civil suit instituted on 30.03.1996, in favour of the respondents- defendants, in equal shares and thereafter a mutation to that effect was also sanctioned.

Thus, the appellant alleged in his plaint that the sale-deed executed by Des Raj was illegal, null and void and the mutation entered thereafter be also declared to be so. The appellant also claimed that he was in possession of the suit land and that the defendants-respondents had no relation with the same. It was further contended that Des Raj was never

authorized to execute the sale-deed, which was without consideration and was thus fraudulently executed in connivance with Gurcharan Singh.

4. The appellant further alleged that Des Raj was, in fact, not even competent to execute the sale-deed as he was a minor at that time and though the appellant had allegedly requested the respondents to annul the sale-deed themselves, they did not do so and threatened to disturb his possession, resulting in the filing of the suit.

5. Upon notice by the learned Addl. Civil Judge, respondents-defendants No.1 and 2, 4 to 10 filed separate written statements, basically taking the same stand, which other than preliminary objections with regard to maintainability, limitation and locus standi etc., stated on merits that the appellant was not in possession of the suit land and that the late Gurcharan Singh was a bona fide purchaser for valuable consideration and as such, there was no defect in the title of the respondents.

The factum of the appellant having purchased the suit land from Aas Kaur and his appointment of Des Raj as his attorney was admitted, further stating that all rights including those of sale, transfer etc. were given to Des Raj by the appellant and that his power was not limited to only management of the property.

It was further contended by the defendants-respondents in their written statement, that as a matter of fact, the appellant used to visit his village every week, as his wife and children were residing there and that he managed his other properties too. Hence, it was denied that he had returned

to the village only in the year 1987 and had come to know about the transactions of 1982 and 1996 only in November 2011.

It was further contended that the appellant-plaintiff never came into possession of the suit land after the sale-deed executed in favour of Gurcharan Singh. As regards any conspiracy between Des Raj and Gurcharan Singh, that was obviously denied by the respondents. It was further contended that Gurcharan Singh was a genuine purchaser as there was no defect in the instrument by which the general power of attorney had been vested in Des Raj by the appellant.

It was further stated that, in fact, Des Raj was the brother of the wife of the appellant, i.e. his brother-in-law, and it was in that capacity that he had been appointed as his attorney on 29.03.1982, in the presence of Mastan Singh and Gurcharan Singh, by a duly registered instrument, attested by the Sub-Registrar, Sri Muktsar Sahib.

Thereafter, the appellant, in fact, through his attorney, sold 33 kanals and 16 marlas of land to Gurcharan Singh for Rs.17000/-, whereas he had purchased it from Aas Kaur @ Aaso Devi for Rs.12,000/- and thus, had earned a profit.

It was further contended in the reply of the respondents-defendants that Gurcharan Singh died unmarried and issueless and consequently the inheritance of the suit land was sanctioned in favour of his mother, Aas Kaur who took possession of it at the spot, after which there was a family settlement between her and her sons Darshan Singh and

Nishan Singh (respondents-defendants No.1 and 2), on the basis of which the civil Court decree was passed on 30.03.1996.

6. After the above transaction of exchange of land is stated to have taken place between Darshan Singh and Nishan Singh, the latter gave his share of the suit land to the former, in exchange for another piece of land of Darshan Singh. Mutation to that effect was also entered on 30.11.2011 and as such, with a long history of transactions right since 1982, leading up to the final mutation on 30.11.2011, i.e. almost 30 years later, the appellant-plaintiff was barred from filing the suit.

7. As regards respondents-defendants No.4 to 10, it was submitted that they were bona fide purchasers of a the major part of the suit land, to the extent of 31 kanals and 7 marlas, purchased from Darshan Singh (respondent No.1), after due verification of title, ownership and possession of Darshan Singh. The land was purchased for a consideration of Rs.22,60,000/- vide registered sale deed dated 18.05.2012, after which respondent-defendant No.10 (Balwinder Singh) had taken possession of the suit land being a bona fide purchaser thereof.

Similarly, respondents-defendants No.4 to 9 had also purchased land measuring 20 kanals 18 marlas from Darshan Singh for a sale consideration of Rs.15,10,000/-, also vide a sale deed registered on the same date (18.05.2012), after which they too had taken possession on the spot, as bona fide purchasers.

It was, therefore, contended that in any case, respondents No.4

to 10 were protected by the provisions of the Transfer of Property Act, 1882.

8. Des Raj, respondent-defendant No.3, the attorney of the appellant, filed a separate written statement, where he admitted to the purchase of the suit land by the appellant vide sale deed dated 27.02.1981 and also stated in his reply that he had been appointed by the appellant to only manage his property and that thereafter, after the appellant-plaintiff retired in the year 1987, he started cultivating his land. Respondent No.3 further admitted to the contention made in the plaint, that the sale deed executed by him (Des Raj) was illegal, null and void and that at the time of such execution on 13.05.1982, he was a minor.

9. A replication having been filed by the plaintiff-appellant, reiterating the contents of the plaint, the following issues were framed by the learned Addl. Civil Judge:-

- “1. Whether the plaintiff is entitled to decree for declaration that he is absolute owner of the land measuring 33 kanals 16 marlas?OPP
2. Whether the plaintiff is entitled to decree for declaration that sale deed dated 13.05.1982 got executed by the Des Raj in favour of Gurcharan Singh is null and void without consideration, as Des Raj was not competent to execute being minor?OPP
3. Whether sale deed was without consideration and benami transaction?OPP
4. Whether mutation No.3786 regarding inheritance of Gurcharan Singh in favour of Aaso on the basis of collusive decree dated 12.11 is liable to be declared as illegal?OPP
5. Whether the judgment and decree passed by the Court of Sh. R.S. Rai dated 30.03.1996 is illegal, null and void?OPP
6. Whether the plaintiff is entitled to decree for permanent injunction for restraining the defendants from alienating or disposing the property on the strength of mutation till the pendency of the present suit?OPP

7. Whether the sale deed was a sham transaction?OPP
8. Whether plaintiff is not in possession over the suit land from 13.05.1982 and suit is not maintainable in present form?OPD 1 and 2
9. Whether the suit of the plaintiff is not maintainable in the present?OPD1 and 2
10. Whether suit is bad for want of proper court fee? OPD 1 and 2
11. Whether the family settlement was not entered into if so to what effect?OPD 1 and 2
12. Whether the suit is bad for non-joinder of necessary party i.e. State of Punjab?OPD 1 and 2.”

Thereafter, the following additional issues were also framed:-

- “1. Whether the defendants No.4 to 10 are bona fide purchaser of the suit land for valuable consideration without any knowledge/defect in general power of attorney?OPD
2. Whether plaintiff is in possession of the suit land?OPP
3. Whether plaintiff is stopped by his own act and conduct from filing the present suit?OPD
4. Whether cause of action has arisen to the plaintiff for filing the present suit?OPD
5. Relief.”

10. The appellant-plaintiff examined one Vijay Kumar Sharma, Clerk in the DAV Senior Secondary School, Sri Muktsar Sahib, as PW-1, to prove that respondent No.3 (Des Raj) was a minor, as per his school leaving certificate (Ex. P-2).

Vipan Kumar, Reader-cum-Registry Clerk, was examined as PW-2, who proved sale-deeds No.130 and 131, of 18.05.2012.

Gurdeep Kaur, HRC, an official from the office of the Deputy Commissioner/District Collector, Sri Muktsar Sahib, appeared as PW-3 and proved the certified copies of sale deeds dated 27.02.1981, 29.03.1982 and

13.05.1982 (Exs.P5 to P7).

The appellant-plaintiff himself stepped into the witness box as PW4 and reiterated the averments made in the plaint.

11. For the contesting respondents-defendants, respondent No.1, Darshan Singh, appeared as DW1 and deposed as per his written statement.

Parwinder Singh, Elementary Teacher of the Government Primary School, Malakjada, District Fazilka, appeared as DW2, who proved the entry of admission of Des Raj in that school in August 1972, in Class 2. As per the admission register, Des Rajs' date of birth was shown to be 05.01.1964.

12. Respondent-defendant No.10, Balwinder Singh, appeared as DW3 and deposed with regard to the sale deed registered on 18.05.2012 in his favour by Darshan Singh, in respect of land measuring 20 kanals and 18 marlas. He too reiterated the contents of his written statement, in his testimony. He also produced the 'jamabandi' for the year 1972-73 and 'khasra girdawaris', as Exs. D3 to D9.

Respondent No.3, Des Raj, stepped into the witness box and he generally reiterated what was stated in the plaint and in his own written statement and further stated on affidavit, that his date of birth was 12.07.1967 and that he had studied in the DAV School, Muktsar and not in village Malakjada and that he had never lived there either.

He further submitted that his date of birth certificate produced by the defendants No.1 and 2 was forged and fabricated. He reiterated that

he had no authority to sell the suit land and in fact, the sale-deed dated 13.05.1982 was not got executed by him in a sound disposing mind and was actually the result of a fraud executed upon him, in favour of Gurcharan Singh.

This witness also further stated that, as a matter of fact, no consideration money had been paid by Gurcharan Singh and that the subsequent collusive decree, the transfer deeds and sale-deeds were also fraudulent transactions. As per Des Raj, Aaso Devi, mother of respondents-defendants No.1 and 2 and the late Gurcharan Singh, was the Aunt (fathers' sister, i.e. 'Bua') of the appellant-plaintiff.

13. After hearing arguments and appraising the evidence, the learned Addl. Civil Judge first came to the conclusion, in view of the conflicting school registers produced to show the date of birth of Des Raj, that no firm conclusion in that regard could be reached, but it was found in the cross-examination of Des Raj that he had actually admitted that he was born in village Malakjada and that he had not gone to get his birth certificate there. Further, since Des Raj had not disclosed his date of birth right up to the point of his testimony, it was held that it was not proved that he was a minor and consequently incapable of executing the sale deed dated 13.05.1982 in favour of Gurcharan Singh. It was further held that there was nothing to prove that the transfer of the land to Gurcharan Singh, vide sale deed dated 13.05.1982, was without consideration.

On the other hand, the testimony of the respondent-defendant

No.10, that the land was purchased in the year 2012 by him and his co-vendee, after duly verifying the title, ownership and possession of respondent No.1, and upon payment of consideration to him, was accepted by the learned Addl. Civil Judge, as was the fact that respondents No.4 to 10 had come in possession of the suit property after its purchase vide sale deed dated 18.05.2012.

Having held as above, the suit of the appellant was dismissed by the learned Addl. Civil Judge.

14. In appeal, the learned first appellate Court disbelieved the testimony of PW1, i.e. Vijay Kumar Sharma, Clerk, in the DAV Senior Secondary School, Sri Muktsar Sahib, as regards the date of birth of Des Raj, on the ground that the record brought by this witness, was without any actual knowledge of its contents.

It was further found by the lower appellate Court, that nothing had been put in cross-examination to PW2, Vipin Kumar, who proved the sale-deeds dated 18.05.2012 (Exs. P3 and P4) in favour of respondents No.4 to 10.

As regards the power of attorney issued by the appellant in favour of Des Raj, it was found by the lower appellate Court that nothing had been shown that the said power of attorney was actually cancelled, in view of the fact that the Clerk (HRC) examined to prove the record pertaining to execution of sale-deeds dated 27.02.1981, 29.03.1982 and 13.05.1982 (Exs. P5 to P7), stated that there she was not aware if the power

of attorney executed by the appellant in favour of Des Raj on 29.03.1982 had been cancelled or not.

15. The learned first appellate Court finally dismissed the appeal mainly on the ground that as per the cross-examination of the appellant, as PW4, he had admitted that Des Raj was his wives' brother and that he had never instituted any suit against Des Raj in respect of the sale of his land to Gurcharan Singh. He also admitted that the land was cultivated by Des Raj from the beginning while the appellant was serving in the Army and that the income was used for his house, and that after 1987 he was himself cultivating it.

The appellant, in his cross-examination, had also admitted that some part of the land had been forcibly taken possession of by some persons, referred to as “Gurmeet Singh and Harphal Singh” etc., in the year 2012 and though he had filed a complaint to the police, it was not registered as an FIR and, in fact, was dropped. He, however, submitted that he had not instituted any complaint in that regard and had not bothered about the revenue records ('khasra girdawaris').

The learned first appellate Court went on to hold that as the remaining land of the appellant was also adjacent to the suit land, and he admitted that he was cultivating it since 1987, it was not possible to believe that he had not bothered about the revenue record or challenged the sale-deeds since 1982. As such, it was held that the evidence had been correctly appreciated by the lower Court.

It was further held by the learned Additional District Judge that DW2, Parminder Singh, Elementary Teacher in the Government Primary School, Village Manakjada, District Fazilka, had brought the admission and school leaving register of that school, by which the date of birth of Des Raj was proved to be 05.01.1964. This witness withstood cross-examination and therefore, the factum of Des Raj being major at the time of execution of the sale deed on 13.05.1982, in favour of Gurcharan Singh, was established.

It was further held that respondents No.4 to 9 having come into possession of the suit land on payment of consideration of Rs.15,10,000/- by them, and Rs.22,60,000/- by respondent No.10 and the sale-deeds having been duly executed in their favour on 18.05.2012, no fault could be found in the same.

16. Finally, it was held that the appellant having admitted to his retirement from the Army in the year 1987 and not having challenged either the sale deed dated 13.05.1982, or the allegedly collusive decree of the year 1996, thus remaining silent right till 14.03.2012, when he filed the suit (out of which the present appeal arises), he had, therefore, in any case lost the right to institute the suit by then, simply on the ground of limitation.

The plea that the protection under Section 41 of the Transfer of Property Act, 1882, was not available to respondents No.4 to 10, as there was no necessity for the sale of the land, was also rejected by the learned lower appellate Court, on the ground that the suit itself was filed beyond limitation and the appellant-plaintiff had chosen to remain silent for at least

25 years (1987 to 2012).

On the above grounds, the first appeal filed by the appellant-plaintiff was also dismissed.

However, though the learned Additional Civil Judge had held issue No.10, along with issues No.12 and additional issues No.3, to be not pressed by the counsel for the respondents-defendants, and as such he had decided the said issues in favour of the appellant-plaintiff, the lower appellate Court held, on arguments addressed in that regard by the respondents' counsel, that court fee, ad valorem, was payable by the appellant and consequently, reversed that finding while dismissing the appeal with costs of Rs.5,000/-.

In the decree-sheet, the Court fee was assessed to be Rs.94,170/-, of which Rs.94,020/- was held to be recoverable.

17. Before this Court, Mr. R.K. Girdhar, learned counsel for the appellant, submits that the appellant was in the Army and that the power of attorney executed by him in favour of Des Raj (respondent No.3), was misused by executing a sale deed in favour of Gurcharan Singh son of Aas Kaur, from whom the appellant had purchased the suit land in the year 1981.

His further contention is that the appellant was in cultivating possession of the suit land since 1981, till the time he discovered (in 2011) that the land had been sold in the year 1982 to Gurcharan Singh, who had, in the meanwhile, died. After that the land reverted to Aas Kaur, who thereafter executed a collusive decree in favour of her remaining sons, i.e.

respondents No.1 and 2.

On a specific query, as to whether any documentary or oral evidence was led to prove the appellants' cultivating possession of the suit land till the year 2011, learned counsel submits that the appellant had himself stepped into the witness box to examine himself and had testified to his possession. Other than that, he admits that as per the revenue record (jamabandies/records of rights), the sale deed in favour of Gurcharan Singh was duly reflected in the revenue record, which thereafter stood in favour of Gurcharan Singh/his successors-in-interest.

18. Having considered the above and the fact that the appellant, admittedly, retired from the Army in the year 1987 and the suit out of which these proceedings arise, was instituted on 14.3.2012, I see no error in the findings of the Courts below, in the absence of any documentary evidence to prove that he was actually in cultivating possession of the suit land till 2011, after which he allegedly discovered that the suit land had been sold and a mutation had been entered in favour of Gurcharan Singh and his successors-in-interest in the year 1982.

No doubt, the appellant and his brother-in-law Des Raj (respondent No.3), both orally testified to the appellants' possession of the suit land at least since 1987; however, other than their self-serving testimony, no person, either the Numberdar or Sarpanch etc. from the village, appeared to testify that the suit land was actually under the appellants' cultivation till 2011 or thereafter.

On the other hand, with the respondents having proved revenue records to the effect that mutations were duly entered in favour of Gurcharan Singh in the year 1982, thereafter in favour of his mother Ass Kaur upon Gurcharan Singhs' death, obviously the possession of the appellant is not proved in any manner after 1982.

Therefore, the suit having been filed in 2012, i.e. 30 years after the sale deed of 1982, and at least 29 years after the mutation was sanctioned in favour of Gurcharan Singh and his successors-in-interest, the suit was completely beyond limitation, with nothing to prove that the appellant had no knowledge of the sale deed and subsequent entries in the revenue records, which were against him for a period of almost 30 years.

19. Further, in view of the fact that the revenue entries went unchallenged for 30 years, it would also have to be held that respondents No.4 to 10 were bona fide purchasers of the land, with no reflection whatsoever, of either the appellants' ownership title or possession, in the record.

No doubt, the said respondents are residents of the same village as that of the appellant and respondents No.1 and 2, and would therefore be obviously aware of the actual title or possession of the suit land. However, in the absence of the appellant being able to show in any manner whatsoever, (other than his own and his brother-in-laws' testimonies), that he was in possession right up till 2011, in the opinion of this Court, respondents No.4 to 10 are to be held as bona fide purchasers, who duly

verified the revenue record to determine the title and possession of the suit land, which stood in favour of respondents No.1 and 2.

20. It does, however, need to be specifically noticed, though not shown from the judgments of the Courts below, that the suit was instituted on 14.03.2012 and the sale-deeds in favour of respondents No.4 to 10 (Exs. P3 and P-4) are dated 18.05.2012. Thus, though otherwise sale of the land after the institution of the suit may, prima facie, attract the doctrine of lis pendens, however, in view of the fact that the suit itself was instituted 30 years after the title passed from the appellant to the predecessor-in-interest of respondents No.1 and 2 (Gurcharan Singh), and subsequently to Aas Kaur and finally to respondents No.4 to 10, that issue is not being gone into at the stage of 2nd appeal, it in any case not having been raised at any stage.

Learned counsel for the appellant, however, finally points to the fact that despite the learned Additional Civil Judge (Senior Division), Sri Muktsar Sahib, having adjudicated issue No.10, i.e. with regard to proper court fees not having been paid, in favour of the appellant, the learned lower appellate Court has reversed that finding and held that the appellant was liable to pay court fees of Rs.94,020/-. He submits that the appellant having served in the Army for almost 20 years, he may be given benefit of the finding in his favour by the learned trial Court and the finding of the learned appellate Court, to that extent, may be reversed.

Though I see no valid reason to reverse the finding of the learned appellate Court on issue No.10, however, keeping in view the fact

that the appellant is a retired soldier and the issue was actually pressed for the first time before the lower appellate Court only, the finding of the learned lower appellate Court on issue No.10, i.e. payment of court fees, is reversed and the appellant is held not liable to pay the aforesaid court fees.

Other than the above, the appeal is dismissed, with no orders as to costs.

February 26, 2016
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(Amol Rattan Singh)
Judge