

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

**R.S.A No. 618 of 2015 (O&M)
Date of decision :11.02.2016**

Gurnam Singh

..... Appellant

Versus

Mukhtiar Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.A.S.Khinda, Advocate
for the appellant.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 16.07.2014 passed by the learned Additional District Judge, Kapurthala, vide which the appeal preferred against the judgment and decree dated 01.02.2012, passed by the learned Addl.Civil Judge (Sr. Division), Sultanpur Lodhi, has been dismissed.

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

3. Appellant-plaintiff Gurnam Singh has filed the suit for declaration that he is owner in possession of the land in dispute described in the head note of the plaint situated at village Naseerwal, Tehsil Sultanpur Lodhi, District Kapurthala along with all the rights appurtenant thereto. He has sought the alternative relief for separate possession of 3/10 share out of 12K-7M belonging to Narain Singh, father of the

parties. He also sought the consequential relief of injunction restraining defendant no.1 from alienating, transferring or creating any change over the land in dispute.

4. As per the case of the appellant-plaintiff, Narain Singh, his father was owner in possession of the land in dispute, which was the ancestral and coparcenary property belonging to the Joint Hindi Family. But, the same was recorded in the name of Narain Singh being the '*karta*' of the Joint Hindu Family. Narain Singh was not in need to of any money to sell the land in dispute. Defendant no.1-Mukhtiar Singh in connivance with witnesses and scribe and by misrepresentation got prepared the sale deed dated 15.02.2007. Narain Singh was totally blind, bedridden and in the evening of his life. He was residing with defendant no.1-Mukhtiar Singh, who took the undue advantage of the blindness, weakness and illness of Narain Singh and got prepared the impugned sale deed dated 15.02.2007, which is illegal, null and void, without consideration and inoperative against the rights of the plaintiff.

5. Defendant-respondent no.1 Mukhtiar Singh contested the suit on the grounds *inter alia* that he has rendered services to deceased-Narain Singh in his lifetime. He was in need of money for his medication and other expenses for which he executed "*Tabdeel Malkiatnama*" dated 15.02.2007 in his favour after receiving the sale consideration. The said "*Tabdeel Malkiatnama*" was duly executed by the deceased-Narain Singh in his sound, disposing mind, which was duly registered with the office of Sub-Registrar and the same is legal and valid. It was further pleaded that the suit property was self acquired property of Narain Singh and he had

every right to transfer the same.

6. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff has concealed true facts from the Court?
OPD
2. Whether suit is not properly valued for the purpose of court fee and jurisdiction?OPD
3. Whether the whole suit property was ancestral and coparcenary property in the hands of Narain Singh?OPP(Added vide order dated 16.02.2011).
4. Whether the sale deed dated 15.02.2007 executed by Narain Singh in favour of defendant no. 1 is illegal, null, void and without consideration?OPP
5. Whether the plaintiff is entitled to declaration as prayed for?
OPP
6. Whether the plaintiff is entitled to separate possession in the alternative?OPP
7. Whether the plaintiff is entitled to permanent injunction as prayed for?OP
8. Relief.

7. On appreciating the evidence and material on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit of the plaintiff vide impugned judgment and decree dated 01.02.2012.

8. Aggrieved with the aforesaid judgment and decree, the defendants preferred the appeal and the same was also dismissed by the learned Additional District Judge, Kapurthala, vide impugned judgment and decree dated 16.07.2014. Hence this Regular Second Appeal.

9. I have heard Mr. A.S.Khinda, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

10. Initiating the arguments, learned counsel for the appellant contended that the suit property was ancestral and coparcenary property of the Joint Hindu Family, which was recorded in the name of Narain Singh only being the '*karta*' of the family. He contended that there was no legal necessity for the transfer of the suit property. Infact, respondent No.1-Mukhtiar Singh has taken the undue advantage of the fact that Narain Singh was residing with him. He was blind, old and sick person and he procured the sale deed dated 15.02.2007 by way of misrepresentation. Thus, the same is illegal and is not binding on the rights of the appellant-plaintiff.

11. I have duly considered the aforesaid contentions.

12. It was incumbent upon the plaintiff-appellant to establish by leading cogent, convincing and reliable evidence that the property in dispute was ancestral and coparcenary property. He was also required to establish that respondent no.1-Mukhtiar Singh has procured the sale deed/Tabdeel Malkiatnama dated 15.02.2007 by way of misrepresentation or taking the undue advantage of the blindness, old age and sickness of Narain Singh. It is further the settled principle of law that the pleadings can never take the place of proof. The pleadings have to be proved by way of leading evidence. In the instant case, appellant-plaintiff Gurnam Singh has placed on file his affidavit in the shape of his examination in chief. Similarly, he got filed the affidavit of his witness Karam Singh. But, both of them have not appeared in the Court to face the cross-examination. It appears from the judgments passed by the learned Courts below that sufficient opportunities were granted for the production of the

aforesaid witnesses to face the cross-examination. But, they have not stepped into the witness box. It is the settled principle of law that if a witness has not appeared to face the cross-examination that statement cannot be legally taken into consideration. So, no legally admissible oral evidence has been adduced by the plaintiff-appellant to support his case.

13. In the documentary evidence, the plaintiff has simply placed on record the copies of the jamabandis Ex.P-3 and Ex.P-4. Copy of the Jamabandi cannot establish the factum that the land in dispute was the coparcenary property and further that the same has been alienated without any legal necessity or that defendant-respondent no.1-Mukhtiar Singh has procured the said sale deed/Tabdeel Malkiatnama by way of misrepresentation or undue influence. So, the concurrent findings arrived at by the learned Courts below requires no interference while exercising the limited powers under Section 100 CPC in the regular second appeal.

14. Thus, no question of law, much less, the substantial question of law as claimed by the appellant arises in the present appeal.

15. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

February 11, 2016

s.khan

(DARSHAN SINGH)
JUDGE