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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**1. RSA-5024-2014 [O&M]
Date of Decision : March 22nd, 2016**

Harvinder Singh alias Harbinder Singh Appellant

Versus

Tejinder Singh and others .. Respondents

2. RSA-5132-2014 [O&M]

Harvinder Singh alias Harbinder Singh Appellant

Versus

Tejinder Singh and others .. Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr. Bikramjit Aroua, Advocate,
for the appellant.

Mr. Mukul Aggarwal, Advocate,
for respondent No.1.

SHEKHER DHAWAN, J.

Challenge in the above titled two Regular Second Appeals is to the judgments and decrees, both dated 4.9.2014, passed by learned Additional District Judge, Tarn Taran whereby, while reversing judgment and decree dated 24.03.2014 of Civil Judge [Junior Division], Tarn Taran, the suit of the plaintiff was dismissed. The Court of first Instance, vide judgment and decree dated 24.03.2014 partly decreed the suit of the plaintiff-appellant. Being aggrieved of the said judgment, two separate

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appeals, one by the plaintiff and the other by the defendants were filed.

The first appeal filed by the defendants titled **Tejinder Singh and others Vs. Harvinder Singh alias Harbinder Singh and others** was allowed and the first appeal filed by the plaintiff titled **Harvinder Singh alias Harbinder Singh Vs. Tejinder Singh and others** was dismissed. Hence, both these appeals, bearing RSA Nos. 5024 and 5132 of 2014 are being disposed of by this common judgment.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

3. Relevant facts of the case for the purpose of decision of this appeal; that the plaintiff-appellant filed suit for declaration to the effect that he is co-owner in possession of the suit land. Earlier Piara Singh son of Mewa Singh was co-owner/co-sharer in exclusive possession of the land measuring 45 Kanals 01 Marlas out of land measuring 180 Kanals 04 Marlas. Said Piara Singh was grand father of the plaintiff who executed a valid registered Will dated 2.11.1995, which was registered on 6.11.1995 in favour of the plaintiff in his sound disposing mind. During his life time, Piara Singh mortgaged the possession of the suit land measuring 45 Kanals 01 Marlas to defendants no.1 to 3 in the year 2001 for a sum of Rs.1,50,000/-. After the death of Piara Singh, his entire estate was inherited by the plaintiff on the basis of registered Will dated 2.11.1995, but defendants No. 1 to 3 were threatening to dispossess the plaintiff on the basis of alleged sale deed 10.10.2001, which was prepared by defendants No.1 to 3 in collusion with the marginal witnesses and the scribe, whereas Piara Singh has mortgaged land without possession to defendants No.1 to 3 on 10.10.2001. Piara Singh never executed alleged

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sale deed. So, defendants No.1 to 3 have no right to dispossess the plaintiff from the suit land and alienate the same and as such necessity of the suit.

4. Defendants No.1 to 3 contested the suit taking preliminary objections regarding its maintainability. As per the defendants, Piara Singh was a co-owner/co-sharer in possession to the extent of 1/4th share and he had sold the land to defendants No.1 to 3 vide sale deed dated 10.10.2001 for a valuable consideration of Rs.11,28,000/- and delivered the possession to the defendants. As per defendants, Piara Singh never executed any Will dated 2.11.1995 in favour of the plaintiff. Piara Singh had never mortgaged the suit land in the year 2001 but he had sold his share to defendants No. 1 to 3 vide sale deed dated 10.10.2001. Mutation No. 2662 of the sale was also sanctioned in the presence of late Piara Singh, who had admitted execution of the sale deed and the consideration was paid to the plaintiff on the direction of the Piara Singh. The total amount of Rs.13,69,000/- was paid to Piara Singh, Vendor by Balwant Singh who was grand father of defendants No.1 to 3 from his Saving Bank Account No. 4077 in Punjab & Sind Bank, Jhabal Kalan. The said amount was transferred from the above said account in the account of the plaintiff. Khasra girdawaries of some khasra numbers were wrong due to which an application for correction of khasra Girdawari entries was moved regarding the suit land which was allowed vide order dated 5.4.2010 and now the defendants are in actual possession of the suit land. No fraud was played upon Piara Singh.

5. As per plaintiff, defendants No. 4 to 12 are the co-sharers in the joint khata and defendant No. 13 is mortgagee due to which they are made

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parties and they are claiming the relief against defendants No. 1 to 3. Defendants No. 4 to 15 were given up on 29.10.2013 by the plaintiff.

6. On the pleadings of the parties, the Court of first instance settled the issues. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, the Court of first instance partly decreed the suit of the plaintiff holding that the sale deed dated 10.10.2001[Ex.D1] was duly executed and it was not a case of fraud. As regard to the execution of Will dated 2.11.1995 [Ex. P1], the Court of first Instance held that the plaintiff has been able to prove the due execution of the Will. The Court of first Instance also recorded the finding that as per Khasra Girdawari and Jamabandis, the plaintiff is in possession of Khasra Nos. 1175, 1180, 1181, 1182, 1183, 1189 and as such, the defendants were restrained from dispossessing the plaintiff from the said khasra numbers except in due course of law.

7. Plaintiff preferred appeal against the said judgment and decree and the Court of first Appeal dismissed his appeal vide judgment and decree dated 4.9.2014. The Court of first Appeal also reversed findings on issue No. 5 on the ground that in fact, defendants No.1 to 3 are in possession of the suit property and as such, present appeals before this Court.

8. Learned counsel for the appellant-plaintiff submitted that as per jamabandi [Ex. P6] and khasra girdawari [Ex. P7], the possession of the suit land has been shown to be of the plaintiff. The Court of first instance also held the possession of plaintiff on Khasra Nos. 1175, 1180, 1181, 1182, 1183, 1189.

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9. Learned counsel for the appellant also submitted that the Will dated 2.11.1995 [Ex. P1] has been duly proved on the file. However, the Courts below misread and misappreciated the evidence. As per learned counsel for the appellant, as the plaintiff was in possession of the suit land, limitation started when right to possession was threatened. At the time of alleged sale deed dated 10.10.2001, the plaintiff was minor and the mutation was sanctioned on 1.3.2004, whereas, the suit was filed on 20.11.2009. Relevant jamabandi is of the year 2007 and thereafter suit was filed within three years. More so, mere entry of mutation in the name of the defendants would not give cause of action to plaintiff to file the present suit. On this point, reliance was placed upon the judgment of a Division Bench of this Court in **Ibrahim alias Dharam Vir Vs. Smt. Sharifan alias Shanti** 1980 AIR [Punjab] 25. According to learned counsel for the appellant, the cause of action for a suit starts from the date of threat to right to possession and not from the date of mutation. In this regard, reliance was placed upon the judgment of a Co-ordinate Bench of this Court in **Smt. Bhagwanti Devi and Ors Vs. Mat Ram [Dead] through L.Rs.,** 2003 (3) R.C.R. [Civil] 100.

10. As regards to sale deed dated 10.10.2001 [Ex.D1], learned counsel for the appellant submitted that consideration of sale deed never passed on to the plaintiff. As per the case of the defendants, sale consideration was Rs.11,28,000/-. Payment was allegedly made in the bank account of minor and same was not paid to the plaintiff. More so, DW-2 Amrik Singh admitted that payment of money was not made in his presence. Even the recital in the sale deed is incorrect because it was wrongly mentioned that possession was given to the vendee, whereas

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possession is still with the plaintiff and the Court of first Appeal completely ignored this fact while recording the finding.

11. Learned counsel for the appellant further submitted that mere recital in the sale deed as to transfer of possession is not conclusive. On this point reliance was placed upon the judgment of a Co-ordinate Bench of this Court in **Jagir Singh Vs. Jagwant Singh 2002(2) PLR 199.**

12. While arguing the point, learned counsel for respondent-defendant No.1 submitted that the total suit land was 45 Kanals 1 Marla. Both the Courts below have already recorded concurrent findings of fact that the sale deed was duly executed and consideration of the sale deed was passed on in accordance with law. Limitation period started from the date of sale deed dated 10.10.2001 [Ex. D1] and the Court of first Appeal has already dealt with this point.

13. As regard to possession, application for correction of *khasra girdwari* was moved on 11.9.2009 and now the entries have been corrected vide order dated 5.4.2010 and possession is already with the defendants and this fact has been admitted by PW-1 and PW-5. As per PW-1, Paramjit Singh, he came to know 2-3 months after the death of Piara Singh. Piara Singh died on 23.12.2006. PW-5 has also admitted in his cross examination that execution of the sale deed [Ex. D1] was in his knowledge. That way, the suit was not filed within the period of limitation and the Court below has rightly recorded the said finding and the present appeals deserve dismissal.

14. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that both the Courts below have already recorded concurrent findings of

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fact that the sale deed, Ex. D1 was duly executed and the same was a registered sale deed. Even passing of consideration was duly proved because defendant had examined DW-3, Gurdev Singh Aneja, Manager, Punjab and Sind Bank who deposed that a sum of Rs.13,76,200/- was transferred from Saving Bank Account of Balwant Singh to the account of plaintiff – Harvinder Singh and Balwant Singh is grand father of defendants No.1 to 3. That way, consideration of sale deed had passed on from defendants No.1 to 3 to the present plaintiff. The Court of first Appeal has rightly observed that even voucher Ex.D3 had been proved on the file.

15. As regards to execution of Will and effect of the same, the Court of first Appeal has rightly observed that the sale deed [D1] was executed by grand father of the plaintiff during his life time and that way, execution of the Will [Ex. P1] in favour of the plaintiff has no effect because the grand father of the plaintiff had alienated the suit property on the basis of sale deed, Ex. D1 and the Will Ex. P1 was to come into force only after the death of Piara Singh and not during his life time.

16. As regards to the factum of possession, the corrected entries have already been recorded in the revenue record as per orders dated 5.4.2010 passed by Assistant Collector IInd grade and now, defendants No. 1 to 3 are in possession of the suit property as they had purchased the same vide sale deed dated 10.10.2001 [Ex.D1].

17. The Court of first Appeal has rightly come to the conclusion that the sale deed [Ex.D1] is the registered document and the same could be challenged within three years of knowledge and the limitation period started to run from the date of registration of the sale deed, whereas in the case in hand, the present suit was filed by the appellant-plaintiff after the expiry of

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period of limitation.

18. This Court has gone through the authorities cited by learned counsel for the appellant and is of the considered view that the same are distinguishable on facts, because in this case, sale deed Ex. D1 has been duly proved, passing of consideration has been proved and mutation has been sanctioned on the basis of said registered sale deed. There is no substantial question of law involved in the present appeals and hence, the same are not maintainable under Section 100 of the Code of Civil Procedure.

19. In view of the above, both the Regular Second Appeals stand dismissed.

(SHEKHER DHAWAN)
JUDGE

March 22nd, 2016
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