

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.504 of 1987

Date of Decision: 21.07.2017

Smt. Lajya Wati and others

...Appellants

Vs.

Surat Singh (deceased through his LRs) and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Baldev Raj Mahajan, Senior Advocate,
with Mr. Akhilesh Vyas, Advocate,
for the appellants.

Mr. Amit Jain, Advocate,
for the respondents.

Amol Rattan Singh, J.

This appeal has been filed by the three defendants in a suit instituted by the two respondents herein (hereinafter to be referred as “the plaintiffs”), seeking therein a decree of declaration under Section 45 of the Punjab Land Revenue Act, 1887, read with Section 34 of the Specific Relief Act, 1963, that they (plaintiffs) are owners in possession of the suit land measuring 8 kanals (fully described in the head note of the judgment of the learned Sub-Judge Ist Class, Amritsar) and that the entry in the revenue record, i.e. the *Jamabandi* for the year 1980-81, showing the first appellant herein, Lajya Wati (defendant no.1) to be the owner of a 1/4th share therein and defendant no.2 to be the owner of a 5/8th share, is illegal and void and even the mutation bearing no.1769, entered on the approval of the Assistant Collector 1st Grade, Amritsar, on 23.09.1983, is also illegal and void and inoperative qua the rights of the plaintiffs. (Invocation of S. 45 of the Act of 1887 is in the context of the entry in the revenue record.)

The suit filed by the plaintiffs was dismissed by the learned Sub-Judge; however, the appeal filed by them was allowed by the first appellate Court (Additional District Judge, Amritsar) and the suit decreed in their favour.

Hence, this second appeal filed by the appellants (hereinafter referred to as “the defendants”).

2. The facts of the case are being taken from the judgments of the learned Courts below, as per which the plaintiffs contended that the first plaintiff, Surat Singh, along with the first defendant Lajya Wati (present appellant no.1), and one Mehnga Ram, husband of defendant no.2 and father of defendant no.3, had purchased the suit land bearing *kill*a no.91/10, comprising 8 kanals, from one Sahib Singh, on 12.10.1960. Plaintiff Surat Singh and Lajya Wati had purchased a 1/4th share each in the suit land, with the remaining half share having been purchased by Mehnga Ram. All the vendees are also stated to have taken possession of the suit land.

Subsequently, Mehnga Ram is stated to have sold an area of 36 kanals, including the 8 kanals constituting the suit land, to the plaintiffs, vide a sale-deed dated 14.02.1961, for a consideration of Rs.1500/-, after which the plaintiffs mortgaged the said land to one Balwinder Singh on 1.05.1970, also giving him possession of the said land.

The mortgage is stated to have been thereafter redeemed by the plaintiffs after a civil litigation with Balwinder Singh.

3. On the aforesaid pleadings, the plaintiffs instituted the suit on 09.02.1984, claiming therein that they had become owners of the disputed 8 kanals that constitute the suit land, vide the afore-mentioned two sale-deeds dated 12.10.1960 and 14.02.1961; and in the alternative, pleading that they

had become owners thereof by way of adverse possession.

4. Notice having been issued, the defendants filed a common written statement denying the claim of the plaintiffs and “also challenged the validity of the sale-deed by Mehnga Ram in their favour” (as per the judgment of the learned Sub-Judge), on the ground that the full consideration was not paid. (However, as per learned counsel appearing for the parties before this Court now, no counter claim was filed).

5. On the aforesaid pleadings, the following issues were framed by the learned Sub-Judge:-

- “1. Whether the plaintiffs are the owners in possession of suit land vide sale deed dated 14.2.1961 and 12.10.1960 of Khasra no.91/10 (8-0), if so its effect? OPP
2. Whether the plaintiffs adversely hold the property? If so its effect?OPP
3. Whether mutation No.1769 was illegal, void and without justification?OPP
4. Whether receipt of payment of Rs.700/- is a forged document?OPP
5. What is the effect of civil court decree on this suit?OPP
6. Relief.”

6. Taking up all the issues together, the learned Sub-Judge found that as regards the purchase of 15 kanals and 7 marlas of land, including the disputed 8 kanals, the purchase from Sahib Singh by the first plaintiff, the first defendant and the husband of the second defendant (Mehnga Ram), that was not disputed by the defendants.

Even the sale made by Mehnga Ram, of 36 kanals, including the disputed 8 kanals, in favour of the plaintiffs was factually not disputed by the defendants; however, they challenged the validity of that sale on two grounds.

Firstly that Mehnga Ram could not alienate a specific portion of joint property and secondly, that the entire sale consideration of Rs.1500/- was not paid by the vendees, i.e. the plaintiffs.

The aforesaid two contentions both found favour with the learned Sub-Judge who is not seen to have otherwise specifically discussed the evidence led by the parties in detail, though the reasoning of the Court is of course given in the judgment..

7. The first reason given for accepting the aforesaid contentions, was that there was no evidence led by the plaintiffs in the form of revenue record to establish Mehnga Rams' exclusive possession of 36 kanals of land and as such it could not be inferred that he had a right to alienate jointly held land, with the other co-sharers (of such 36 kanals), not being co-vendors in the sale. Hence, he could only have alienated as much of the property as fell to his own share, further “subject to final adjustment at the time of partition”.

On the aforesaid reasoning, the alienation by Mehnga Ram of entire *killa no.91//10*, in favour of the plaintiffs, was held to have “no consequence in the eyes of law”.

8. As regards the second contention of the defendants that the entire amount of Rs.1500/- not having been fully paid, as had been settled by way of sale consideration in the sale agreement dated 14.12.1961, that too was found by the learned Sub-Judge to be a correct averment, as the production of a receipt, Ex.P3, was held not to be sufficient proof of such payment, with the signatures of Mehnga Ram on that receipt, also held to have been “successfully impeached”.

9. Further, first holding that it was not necessary to discuss the earlier litigation between the plaintiffs and their mortgagee, Balwinder Singh,

regarding redemption of 36 kanals of land, however, it was also held that even if it was accepted that the plaintiffs in their capacity of joint owners had mortgaged the land, including the disputed 8 kanals, and had got it redeemed subsequently, that was not sufficient to establish that they had either an exclusive right on the joint property, or even that they had also become owners of the disputed land by way of adverse possession.

On that question, it was also held that joint owners of the property could not set up a claim of adverse possession to the detriment of other co-owners.

Yet further, it was held that the plaintiffs having in any case put forth a plea of their right to the property on the basis of a sale-deed executed by Mehnga Ram in their favour, the alternative plea of adverse possession was not maintainable.

10. It was next held by that Court that even “present possession” of the plaintiffs on the disputed 8 kanals, i.e. *kill*a no.91//10, was not borne out by the copies of the revenue record produced before that Court and in fact counsel for the plaintiffs had mainly relied upon the previous litigation between the plaintiffs and their mortgagee, Balwinder Singh, as reflected in the judgment dated 18.08.1982 (in the lis with Balwinder Singh), a copy of which led as Ex.P-3/4 by way of evidence in the current lis.

It was found that though in the said judgment it was held that the plaintiffs were mortgagors as also owners of the disputed *kill*a (acre), yet it was found that the main issue in question in the previous lis was whether Balwinder Singh was a mortgagee under the two plaintiffs and Rattan Kaur (she also being a plaintiff in that suit along with the present plaintiffs Surat Singh and Nanak Singh). Hence, with the defendants in the present lis not

being a party to that litigation, it was held by the learned Sub-Judge that their rights in the joint property in any case could not be governed by that judgment, including the observation in paragraph 12 thereof, that the plaintiffs had become owners of the disputed *kill*a by way of adverse possession.

11. Lastly, it was held that even otherwise, the plaintiffs even as mortgagors qua Balwinder Singh, had not proved (in the present lis) that they had actually obtained possession of the suit property as had been mortgaged, pursuant to the judgment of redemption in their favour.

On the aforesaid findings, all the issues were decided in favour of the defendants and against the plaintiffs, and their suit dismissed.

12. The plaintiffs having filed an appeal against that judgment, the learned Addl. District Judge, Amritsar, after referring to the pleadings of the parties and the issues framed by the learned Sub-Judge, first noticed that though the learned Sub Judge had concluded that no revenue record showing the exclusive possession of the plaintiffs over the suit property had been produced and that once they had contended that they were in possession as joint owners thereof, there was no question of their being owners by way of adverse possession, however; the 1st appellate Court, further noticed, in the context of the latter finding, an argument on behalf of the appellants-plaintiffs that where possession is handed over to the vendees even as co-sharers and they continue in such possession, recorded as such in the revenue record, their possession is deemed to be adverse from the date of such possession itself. A judgment of this Court in Lachhu Ram and others v. Dharm Kaur 1981 PLJ 123, had been cited before the first appellate Court in support of the said argument.

It had been further contended before that Court that with the plaintiffs having come into possession of the suit property and thereafter even having mortgaged it to Balwinder Singh, with the khasra girdawari (annual revenue record), Ex.P4, showing that it was the same Balwinder Singh who was in possession of khasra no.91//10, therefore, the possession of the plaintiffs could not be doubted. The *jamabandi* (record of rights) for the year 1980-81, Ex.P7, and the judgment of the civil Court in the earlier suit of the plaintiffs, instituted against Balwinder Singh, was also relied upon, on behalf of the plaintiffs.

13. The learned first appellate Court went on to record a finding that in fact the entire case of the plaintiffs had actually been admitted by the only defendant who stepped into the witness box, i.e. defendant no.3 Sita Devi, who as DW1, first in her examination-in-chief stated that her father Mehnga Ram was in possession of the suit land and thereafter in her cross-examination, stated that the defendants were in fact not in cultivating possession of the land. She also admitted that her father sold the suit land to the first plaintiff, i.e. plaintiff Surat Singh, who was actually put in possession of the land.

DW1 also admitted that the suit land was mortgaged with Balwinder Singh and others by Surat Singh, and that Surat Singh had also got it redeemed and had taken actual physical possession thereof.

14. On the issue of inadequate sale consideration having been paid, the learned Additional District Judge recorded that this witness had stated that her father was a matriculate and she herself had also studied up to higher secondary. On that admission, an inference was taken that the receipt, Ex.P3, signed by Mehnga Ram, was proof enough of the entire sale consideration

having been paid.

15. Yet further, the first appellate Court found that the plea of the appellants-plaintiffs was duly supported by the revenue record, as also by the judgment of the civil court in the earlier litigation (with Balwinder Singh).

16. On the aforesaid findings, the judgment and decree of the learned Sub Judge were reversed, holding that the plaintiffs were owners of the suit land by virtue of the sale deed executed in their favour and that otherwise also, they “obviously hold the property in dispute”, qua the defendants, in terms of the judgment in *Lachhu Rams'* case (supra).

Mutation no.1769 sanctioned in favour of the defendants, was therefore held to be illegal and not binding upon the rights of the plaintiffs.

17. Consequently, the appeal was allowed and, while setting aside the judgment and decree of the lower Court, the suit of the plaintiffs was decreed in their favour.

18. In this second appeal before this Court, filed by the respondents-defendants, the following questions of law have been framed by learned counsel for the appellants:-

- “1. Whether a co-sharer can claim adverse possession against other co-sharer when admittedly the suit property is not partitioned?
2. Whether a suit for declaration on the basis of ownership by way of adverse possession is maintainable?
3. Whether plea of ownership on the basis of sale deed as well as adverse possession are contradictory to each other and not legally sustainable?
4. Whether mortgaging a part of the joint property by a co-sharer and later on getting redeemed that property makes him exclusive owner of that property?
5. Whether sale of a specific portion of the joint property

amounts to sale of share in joint property unless the property is partitioned?

6. Whether the earlier judgment Ex.PW3/4 is binding on the defendants even though they were not party to that litigation?
7. Whether judgment and decree of first appellate Court suffers from perversity being contrary to evidence and settled principles of law?"

Mr. Amit Jain, learned counsel for the respondents-plaintiffs also raised an issue of whether the sale made by Mehnga Ram (husband of defendant no.2 and father of defendant no.3), even qua the share of defendant no.1, Lajya Wati, he being her son-in-law, the sale would be protected by Section 41 of the Transfer of Property Act, 1882 and Lajya Watis' consent would be deemed to have been given, as her implied consent, to such sale. Hence, another question which arose for consideration of this Court, in this second appeal, is as follows:-

- “8. Whether the admitted sale of 36 kanals of land by Mehnga Ram, including the 8 kanals that constitute the suit land, is protected in favour of the plaintiffs, by Section 41 of the Transfer of Property Act, 1882?”

19. Mr. Baldev Raj Mahajan, learned Senior Counsel appearing for the appellants-defendants, first submitted that the suit property never having been partitioned, even if a specific khasra number was sold by Mehnga Ram, to plaintiff Surat Singh, he, i.e. Surat Singh, would still be deemed to be in possession as a co-sharer thereof and cannot claim possession either by way of adverse possession or on the basis of a sale deed qua a specific khasra number, against another co-sharer.

To support this contention, Mr. Mahajan relied upon a judgment

of a Full Bench of this Court in Ram Chander v. Bhim Singh & ors. 2008(3) RCR (Civil) 685.

20. Learned Senior Counsel next submitted that other than the fact that a co-owner cannot claim ownership of a specific area of a jointly held property, further, the first appellant-defendant, Lajya Wati, in any case had never sold any property of hers to the plaintiffs and therefore, she would in all circumstances be a co-sharer even if for any reason (though not admitted) it is to be taken that Mehnga Ram had sold off the suit property for consideration paid.

21. Mr. Mahajans' next argument was as was made before the Courts below, to the effect that with Rs.700/- still remaining to be paid of the total sale consideration of Rs.1500/-, the sale in favour of the plaintiffs by Mehnga Ram could not be deemed to be a concluded sale by which the rights in the suit property got transferred to the plaintiffs and in fact, the receipt, Ex.P3, was 'wrongly appraised in evidence' by the first appellate Court.

22. Mr. Mahajan further relied upon the following judgments to support his case:-

- i) Gurdwara Sahib Sannauli v. State of Punjab and others 2009(2) PLR 756; and
- ii) Vijay Bhawar and others v. Ajaib Singh (deceased) through his LR 2015(3) RCR (Civil) 604.

Both the judgments are to the effect that no declaration can be sought by the plaintiff seeking a title of ownership, on the plea of adverse possession.

23. In response to the aforesaid arguments, Mr. Amit Jain, learned counsel for the respondents-plaintiffs (the first plaintiff now represented by

his LRs), first submitted that once a specific khasra number had been purchased by the plaintiffs from Mehnga Ram, the latter and his LRs would cease to have any interest in the suit property and therefore cannot question the sale deed at all.

He further submitted that the appellant-defendant no.1 herself never stepped into the witness box and was only represented by her attorney, i.e. defendant no.3 Sita Devi, and the whole litigation was actually a proxy litigation with Sita Devi not having any personal knowledge with regard to the sale deed of 1961, or any events of that year, she being only six years old at that time.

On an attorneys' testimony not being acceptable, in the shoes of the plaintiffs, unless the attorney had personal knowledge of specific events, Mr. Jain cited the following judgments:-

- i) **Man Kaur (dead) by LRs v. Hartar Singh Sangha (2010) 10 SCC 512; and**
- ii) **Janki Vashdeo Bhojwani and another v. Indusind Bank Ltd. And others (2005) 2 SCC 217.**

Mr. Jain therefore contended that, in fact, with no person on behalf of the defendants having stepped into the witness box, as had personal knowledge of the facts of the case, the stand of the defendants would be '*non-est*', the averments of the plaintiffs therefore being accepted as they were averred and testified to.

24. Mr. Jain next submitted that actually as regards the amount of Rs.700/- to be paid later, as was stated in the sale deed, Ex.PW3/2, the receipt, Ex.P3, was found to have been duly proved in respect of such payment, and that finding of fact by the lower appellate Court would not be interfered with

by this Court in second appeal. Thus, with the sale deed duly proved and as regards the events of possession of the suit land, after Sita Devi had reached the age of understanding, her testimony to the effect that it was actually the plaintiffs and their mortgagee Balwinder Singh who had remained in possession thereof, the said part of the testimony would in fact militate against the entire case of the defendants, and was actually a vindication of the stand of the plaintiffs.

He further submitted that in any case no suit had ever been filed, nor even had any counter claim been filed in the present *lis*, by the appellants-defendants, either with regard to getting the sale deed annulled on account of non-payment of consideration, nor even had they sought any recovery of the remaining Rs.700/-, which was for the reason that it actually stood duly paid.

25. Learned counsel for the respondents-plaintiffs next argued that Mehnga Ram had in fact even sold a part of Lajya Watis' share in 1961 and therefore, the said sale in favour of the plaintiffs was protected under Section 41 of the Transfer of Property Act, as Mehnga Ram at that time was in actual cultivating possession of the suit land, including Lajya Watis' share, as was duly admitted by Sita Devi, DW1.

He therefore prayed for dismissal of the appeal.

26. In rebuttal to the aforesaid arguments, Mr. Mahajan, learned Senior Counsel appearing for the appellants-defendants, submitted that there was no plea at all in the plaint, to the effect that Mehnga Ram was actually the real owner who had sold Lajya Watis' share and therefore, the said argument made by counsel for the respondents is wholly unsustainable. He next referred to paragraphs 2 and 3 of the preliminary objections in the written statement, to the effect that though the sale deed was alleged to have been executed in

1961, no suit had been instituted by the plaintiffs during the life time of Mehnga Ram, who remained alive till 13.10.1978. It was only six years after his death, that the suit was instituted, because of the fact that the total consideration money had not been paid and consequently, in fact, possession of the suit land had not also been delivered to the plaintiffs.

He next pointed to paragraph 3 of the preliminary objections, wherein the receipt with regard to the payment of Rs.700/- was specifically averred by the defendants to be a forged document, further contending that Mehnga Ram never signed in Urdu but always in English.

Similarly, learned Senior Counsel pointed to paragraph 2 of the written statement on merits, wherein it was averred that Mehnga Ram was owner of a 5/8th share in the land and was therefore not entitled to sell more than his own share and consequently, he could not have sold 36 kanals of land, including killa no.91//10, in favour of the plaintiffs.

27. On the aforesaid arguments, Mr.Mahajan submitted that the appeal deserves to be allowed and the judgment and decree of the learned Sub Judge, dismissing the suit of the plaintiffs, reinstated.

28. Having considered the arguments of both learned counsel as also the judgments of the learned courts below, the questions of law framed in paragraph 18 hereinabove are proceeded to be answered.

29. As regards the question of the plaintiffs having made an alternative plea of having becomes owners of the suit property by way of adverse possession, thereof (i.e. if their plea of being owners in terms of the sale deeds dated 12.10.1960 and 14.02.1961, is not accepted for any reason by the Court), it is to be stated at the outset that as per law now wholly settled by the Supreme Court, in **Gurudwara Sahib v. Gram Panchayat Village**

Sirthala and another 2013(4 RCR (Civil) 703, a plaintiff in a suit cannot seek a declaration that he having been in adverse possession of the suit property, to the knowledge of the owner thereof, such possession has matured into ownership.

Hence, the ratio of the judgment of this Court in another case, *Gurdwara Sahib Sannauli v. State of Punjab and others* (already cited by learned counsel for the appellants), was upheld.

The following paragraph from the judgment of the Supreme Court can be referred to:-

“7. In the Second Appeal, the relief of ownership by adverse possession is again denied holding that such a suit is not maintainable. There cannot be any quarrel to this extent the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings filed against the appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.”

30. Hence, though otherwise also, the reasoning of the learned Sub Judge, to the effect that the plaintiffs could not take a plea of both ownership on the basis of the sale deeds in their favour and alternatively by way of adverse possession, is also sound reasoning, however, the plaintiffs being debarred, as per settled law, from seeking a declaration of title on the basis of adverse possession, it is held that such alternative plea was not available to the respondents-plaintiffs herein and therefore, the finding of the learned first appellate Court in their favour on that issue is hereby set aside and that of the

learned Sub-Judge is upheld.

It is, however, clarified that if a situation arises that a suit for possession is instituted by the owners/co-owners of the suit property against the respondents-plaintiffs, a plea of adverse possession would be available to them in defence, which of course would be considered wholly on its own merits, in any such suit instituted, if the suit itself is found to be maintainable.

Consequently, the first three questions of law raised by learned counsel for the appellants-defendants, are answered as above, in favour of the appellants-defendants and against the respondents-plaintiffs.

31. Before going on to answer the 4th question of law framed (supra), it is to be noticed that the findings of the learned Sub Judge to the effect that Mehnga Ram was not the exclusive and sole owner of the 36 kanals of land sold by him, including the 8 kanals that constitute the said suit property, is a finding that factually has not been reversed by the learned lower appellate Court also and such co-ownership is not denied even before this Court, though the argument in this second appeal, on behalf of the respondents-plaintiffs, as already noticed, is that the sale by Mehnga Ram of the suit property, even to the extent of the share of the other co-owners, specifically his mother-in-law, appellant-defendant no.1 Lajya Wati, would be protected by Section 41 of the Transfer of Property Act.

Thus, to repeat, the factum of the parties being in co-ownership of the suit property, without a partition having taken place, is not factually denied.

In that background, question no.4, as to whether simply by mortgaging a part of the joint property by a co-sharer, who later also gets it redeemed, would entitle him to claim himself to be the exclusive owner

thereof, in the opinion of this Court, has to be again answered against the respondents-plaintiffs, by holding that a mortgagor even of a specific property, which is otherwise not shown to be partitioned, does not become the exclusive owner thereof simply by having mortgaged it, because it was in his possession. That principle would hold even with the mortgagee eventually having returned such possession, upon redemption of the mortgage by the mortgagor.

Of course, in the present case, there is also an issue of whether possession was eventually taken by the respondents-plaintiffs after the suit property was got redeemed from Balwinder Singh, pursuant to his (Balwinder Singh) having lost the suit for redemption, filed by the respondents-plaintiffs and their co-mortgagors.

That question would be looked at a little further ahead, but as regards the question of the plaintiffs having become exclusive owners of the suit property simply on the basis of being mortgagors thereof, on first principle alone it has to be held, as has already been observed hereinabove, that a mortgagor is not necessarily an owner of a property. He may even be a lessee thereon who has mortgaged it, with or without the consent of the owner, or as in the present case, he having mortgaged it as a co-sharer, possibly being in possession thereof. However, such factum of a mortgage having been executed by him, cannot entitle him to claim exclusive ownership of such property simply on that basis, or even on the basis of possession, unless the joint property is partitioned.

Therefore, the 4th question raised is answered to the above effect, against the respondents-plaintiffs.

32. Coming next to the important questions, of whether sale of a

specific portion of a joint property, amounts to a sale of a share in the joint property or whether it would be deemed to be a sale by the vendor, as the exclusive owner thereof; and in this particular case, whether the principle contained in Section 41 of the Transfer of Property Act, can be invoked by the respondents-plaintiffs to contend that even a sale of Lajya Watis' share, by her son-in-law Mehnga Ram, would be deemed to be a sale by her.

33. In this regard, coming first to question no.5, on whether the sale of a specific part of the property, would be deemed to be a sale by one of the co-sharers thereof, as an exclusive owner. In the opinion of this Court, in the absence of any partition having taken place amongst all co-sharers in a jointly held property, even making a sale of a specific part of the property cannot be deemed to be a sale of such specific part of the property, by the vendor, as an exclusive owner thereof.

Even if possession of an exclusive part of the joint property is given by the vendor to the vendee, it would still be deemed to be a sale of his share only by the vendor. However, at the time of partition of the property, if the specific area sold is not found to be beyond the share of the vendor, adjustment of the vendee on that particular part of the suit property would be looked into by the authority/court seized of such partition proceedings, naturally subject to the consideration of any objections raised by other co-sharers in that regard.

Hence, question no.5 raised by learned counsel for the appellants in this appeal, is answered to that effect, again against the respondents-plaintiffs and in favour of the appellants-defendants.

34. Coming to question no.8, on whether the sale made by Mehnga Ram was protected in favour of the respondents-plaintiffs by Section 41 of the

Transfer of Property Act, the said provision is reproduced hereinunder:-

“41. Transfer by ostensible owner.—Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it:

Provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.”

In the wake of the aforesaid provision, it is seen that Mehnga Ram admittedly being the son-in-law of appellant-defendant no.1 Lajya Wati, the sale made by him, he also having been admitted by defendant no.3 in her cross-examination as DW1 (she also being the attorney of Lajya Wati), to be in possession of the suit property, Lajya Watis' consent would seem to be implicit in such transfer, especially with defendant no.3 having also further admitted that possession of the land that was sold by Mehnga Ram, was given to plaintiff no.1 Surat Singh.

It needs to be seen here that, as contended by Mr. Amit Jain, learned counsel for the respondents-plaintiffs, that no suit seeking annulment of the sale deed or even a counter-claim to that effect, was ever filed by the appellants-defendants, even in response to the suit filed in the present *lis*.

Hence, with the sale deed actually never questioned either by Mehnga Ram during his lifetime, or by Lajya Wati herself, and with defendant no.3 admitting that Surat Singh was put in possession of the suit property by her father Mehnga Ram, and that he continued to be in such possession till he mortgaged the suit property to Balwinder Singh, that would, in the opinion of this Court, be sufficient evidence to hold that Lajya Wati

actually had consented to her son-in-law making a sale of the suit property to the respondents-plaintiffs and therefore even though Mehnga Ram sold off a share of his co-sharer, i.e. his mother-in-law Lajya Wati, such sale would be protected by Section 41 of the Transfer of Property Act.

Thus, question no.8 framed on the basis of the argument raised by Mr. Amit Jain, learned counsel for the respondents-plaintiffs, is answered to the aforesaid effect, in favour of the respondents-plaintiffs and against the appellants-defendants.

35. The next question that further needs to be seen is that even though the factum of the sale itself has been held by this Court to be a valid sale in terms of Section 41 of the Act of 1882, can the sale be held to be valid, in terms of the entire sale consideration of Rs.1500/- having been paid or not by the respondents-plaintiffs to Mehnga Ram.

It is not in dispute that Rs.800/- was paid as part consideration at the time of execution of the sale deed on 14.02.1961 and therefore, the question only is as to whether the remaining amount of Rs.700/- was paid, as was contended by the respondents-plaintiffs on the basis of the receipt stated to have been issued by Mehnga Ram, Ex.P3.

The learned Sub Judge in his judgment, on this issue, i.e. issue no.4, held that the payment of the entire sale consideration was not proved simply by production of the receipt, Ex.P3, and that the signatures of Mehnga Ram (upon that receipt) “have been successfully impeached”.

As to what evidence was led by the appellants-defendants to prove that the signatures on the said receipt were not those of Mehnga Ram, had not been discussed at all in the judgment of that Court.

The learned Additional District Judge (1st appellate Court),

though again has not discussed the evidence led by both parties on that issue in detail, however, has taken an inference in favour of the receipt actually having been issued by Mehnga Ram (on receipt of the remaining consideration of Rs.700/-), on account of the fact that in her cross-examination, DW-1 firstly admitted that her father was a matriculate and that she herself was educated upto the level of higher secondary.

Though the education level of appellant-defendant no.3 would be relevant only to the extent that she could understand the facts of the case, including the fact that it had been averred by the plaintiff that the receipt Ex.P3 was issued/executed by Mehnga Ram, it otherwise would have no relevance as regards the actual issuance of the receipt (in the year 1962, as is shown to this Court also from the record). However, in the opinion of this Court, it was not the learned Sub Judge who took a correct inference on Mehnga Rams' signatures on the receipt having been successfully disputed, but it was the first appellate Court that took a correct inference, seeing that the signatures in Urdu were never disproved to be those of Mehnga Ram, with the onus to refute the factum of the signatures on the document led as evidence by the plaintiffs, being on the defendants. The contention of the defendants in this regard was that Mehnga Ram never signed in Urdu but only in English and therefore, the said receipt having been shown to be signed by him in Urdu, they were contended to be not his signatures. However, in the absence of any handwriting expert examined to say so, and defendant no.3 having simply denied knowledge of whether her father was educated in Urdu or not, qualifying that statement by saying that he used to work "most of the time" in English, in my opinion that did not prove that the signature was not his.

In fact, she did not also wholly deny the signatures and again

simply stated towards the end of her cross-examination that she could not say whether the signatures on “Ex.D2”, were his signatures or not.

It is to be noticed immediately that as a matter of fact, no exhibit marked as D2 has been shown to this Court from the records of the Courts below. Mehnga Rams' signatures in English undoubtedly are seen on the photocopy of the sale deed admitted to have been executed by him on 14.02.1961, which is first seen to be marked as Ex.PW3/3 but later Ex.PW1/1. His name is shown to be written in Urdu, but whether it is by way of his signatures or that is simply his name written by the scribe, is not determinable.

The said scribe, Shri Bhagwan Dass (document writer), is shown to have appeared as PW1. He testified that Mehnga Ram signed on the document, both in English as well as Urdu.

In cross-examination, he stated that as regards the entry of the receipt in his register, at Sr. no.343, (with the said receipt also stated to have been scribed by this witness, on 20.02.1962), Mehnga Ram had signed therein in English, but on the original receipt, the signature was in Urdu.

Of course, this witness denied that the said receipt was written out by him afterwards and somebody else signed for Mehnga Ram.

36. Having seen the above, even though it is wholly a question of fact, but it was found necessary to be gone into, both the learned Courts below having taken a completely contrary view on the same.

It must be stated that on the basis of the evidence led, Mehnga Rams' signatures on the receipt, Ex.P3, were neither conclusively proved nor disproved. The onus of proving them was first on the plaintiffs, but with the plaintiffs having actually produced a document contending that the signatures

were of Mehnga Ram, in Urdu, and the sole defendant who testified, i.e. his daughter, DW1 (defendant no.3), Sita Devi, not having examined any handwriting expert to specifically state that those signatures were not Mehnga Ram, the accompanying circumstances would be needed to be seen.

It is to be seen that, as already noticed, Mehnga Ram himself never ever filed a suit since 14.02.1961, i.e. the date of the sale by him, till the time of his death, i.e. 1978, to say that he was not paid the remaining consideration and therefore the sale deed be declared to be null and void and he be declared to be the owner of the suit property on that basis.

This is despite the fact that it is even the case of defendants, as per the testimony of DW1 (defendant no.3 Sita Devi), that plaintiff no.1 Surat Singh had mortgaged the land to Balwinder Singh and had got that mortgage redeemed. She further admitted that they themselves, i.e. the defendants, were never in actual cultivating possession of the suit land, though prior to it having been handed over to plaintiff Surat Singh, Mehnga Ram was in cultivating possession thereof.

Hence, the inference that would be taken by this Court would be that with Mehnga Ram never ever having challenged for the 17 years that he remained alive after 14.02.1961, either the mortgage entered into by Surat Singh and his co-mortgagors with Balwinder Singh, in respect of the suit land, by filing any suit either for possession on the basis of title or/and for declaration that the sale deed dated 14.02.1961 be declared to be null and void or that Surat Singh and his co-mortgagors had no right to mortgage the suit land, he accepted that sale to be *fait accompli*, thereby accepting the fact that he had been paid the entire sale consideration.

In this regard, in fact, the argument of learned Senior Counsel

appearing for the appellants-defendants, that the plaintiffs did not file any suit right till about three years after Mehnga Rams' death, does not work against the plaintiffs, they already being in litigation to get the mortgage redeemed in their favour, from the mortgagee Balwinder Singh. Thus, there would be no occasion for them to file a suit against Mehnga Ram. In fact, if the total sale consideration had not been paid, it was for Mehnga Ram or Lajya Wati to have filed a suit against the plaintiffs, challenging his/her right over the suit land including the right to mortgage it. Thus, it has to be held that the sale was accepted by Mehnga Ram to be not imperfect in any manner.

37. Consequently, even the factual question above, is answered to the effect that with Mehnga Ram never having challenged the sale deed executed by him on 14.02.1961, even on the ground that full consideration had not been paid to him, for the 17 years that he remained alive, the learned first appellate Court, though not for that reason, did not err in holding that payment of the entire sale consideration of Rs.1500/- was duly proved.

Consequently, question no.7, as to whether the judgment and decree of the first appellate Court suffers from perversity, is answered to the effect that no such perversity is seen by this Court in the judgment and decree passed by the learned first appellate Court, except to the extent that the said Court erred in law in holding the plaintiffs to have also perfected their title by way of adverse possession.

38. The other question that would remain to be answered, though not framed as a question of law, is as to whether, the entries in the revenue record in favour of the appellants-defendants, showing them to be owners in possession of the suit property, are sustainable or not

In the light of the aforesaid discussion, especially with it not

being denied that defendant no.3, as DW1, in fact, admitted that the defendants themselves had never been in possession of the suit land after it was sold to the plaintiffs, with the first plaintiff in fact put in such possession by Mehnga Ram himself, the entries to the contrary made by the revenue authorities, are wholly illegal and void. Consequently, the respondents-plaintiffs are entitled to a declaration that such entries are illegal, null and void and not binding on them.

39. In the light of the aforesaid testimony of defendant no.3, in fact even the question framed at Sr. no.6, on whether the earlier judgment in the *lis* between the respondents-plaintiffs and their mortgagee, Balwinder Singh, i.e. the judgment Ex.PW3/4, is binding on the appellants-defendants or not, they not being party that *lis*, becomes a redundant question. This is so because the only question in that case was whether Balwinder Singh was indeed a mortgagee of the respondents-plaintiffs herein and their co-mortgagor, Rattan Kaur, and whether they were entitled to get the suit land redeemed from him upon payment of the mortgage amount. With defendant no.3 having testified herself that the suit land was handed over to Surat Singh, that question no longer arises except to state that the finding in that judgment, Ex.PW3/4, to the effect that the plaintiffs herein (also plaintiffs in that case) had become owners of the suit land by way of adverse possession would not be a finding that would bind the present appellants-defendants, they not being a party to that suit.

40. In view of the aforesaid findings, though the questions of law raised at Sr. nos.1 to 3 and 4 & 5 and partly even question no.6, have been answered against the respondents-plaintiffs, the crucial questions having been answered in favour of the respondents, on whether the sale deed executed by

the predecessor-in-interest of the appellant-defendants, i.e. by Mehnga Ram, in favour of the respondents-plaintiffs in 1961, was a validly executed sale deed, never challenged by him or appellant-defendant no.1 Lajya Wati, this appeal cannot succeed and is therefore dismissed, with costs of Rs.1000/-.

July 21, 2017
vcgarg

(AMOL RATTAN SINGH)
JUDGE

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|-------------------------------|-----|
| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | Yes |