

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.515 of 1991
Date of decision:24.4.2017**

Ram Kishan and another

...Appellants

Versus

Kalu Ram @ Hari Dutt and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.K.G.Choudhary, Advocate for the appellants.

Mr.K.S.Cheema, Advocate for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant regular second appeal, at the hands of unsuccessful defendants, is directed against the impugned judgment and decree dated 12.12.1990 passed by the learned first appellate court, whereby first appeal of the defendants was dismissed and the impugned judgment and decree dated 22.8.1988 of the learned trial Court, decreeing the suit for declaration filed by the plaintiff, were upheld.

Brief facts of the case, as noticed by the learned first appellate Court in paras 2 and 3 of the impugned judgment, are that Smt. Bhango had 1/6th share measuring 4 kanals 7 marlas out of 26 kanals of land comprised in Khewat No.20 Khatauni Nos. 46 to 49 Khasra Nos. 33R/18/2 and 33R/13/2, 40R/16/1, 25/1 and 24/2, 114/2, 33 R 23/2 and 24/1, 41/R/3/2 and 4/1 and 43R/5/1 and 5/2 situated in village Phambra Tehsil and District

Hoshiarpur, vide Jamabandi for the year 1982-83. She has died. She sold entire 6 kanals 3 marlas of land of khatauni No.49 which was more than her share to Smt. Melo etc. It was averred that abovesaid Bhago alongwith Leelo and Jeeto sold share of her land out of the above said 26 kanals 2 marlas of land in favour of Mehar Singh and others in the year 1960. The same was mutated in favour of Mehar Singh. Thereafter Lello sold another 2 kanals 4 marlas of land out of the suit land to the plaintiff and others vide sale deed dated 17.6.1970, Bhago had already sold 18 marlas of abadi in Khatauni No.49 khewat No.20. It was alleged that vide registered sale-deed dated 30.1.86 above said Bhago sold another 4 kanals 6 M of land out of 26 kanals 2 marlas of land of khewat No.20, Khatauni Nos.46, 47 and 48 situated in village Phambra to defendants Nos.1 and 2 in consideration of Rs.5000/-. In this manner Bhago had sold 2 Kanals 2 marlas excess area out of her share. She owned 4 kanals 7 marlas of land out of 26 kanals 2 marlas but had sold in all 6 kanals 9 marlas out of khewat No.20. She cleverly excluded khewat No.49 out of this sale deed while in fact she had sold more than her share out of this Khewat in the garb of her being a co-sharer. A co-sharer could not sell more than his share in the entire Khata. Thus Bhago was not competent to sell the land in dispute measuring 2 kanals 2 marlas as she was not owner thereof. The said sale deed was stated to be void, unauthorized and illegal. As per rights of ownership and possession of the plaintiff and defendant No.3 over the same land defendant Nos.1 and 2 were not the owners thereof. Defendants No.1 and 2 were the last purchasers hence their rights were to suffer. They had their remedy if any against the remaining other land of Bhago only. Defendants No.1 and 2

were head strong persons. They had no respect for law and they wanted to take forcible possession in spite of the repeated requests. Defendants Nos. 1 and 2 had not admitted the claim of the plaintiff. So the suit was filed by Kalu Ram alias Hari Dutt for declaration to the effect that he and defendant No.3 Premjit were the owners in possession of 2 kanals 2 marlas of land 42/128th share out of 6 kanals 8 marlas of land of khewat No.20 Khatauni No.49 Khasra No.33/23/2,24/1 and 41 R/2/3 and 4/1 vide jamabandi for the year 1982-83 situated in village Phambra and the sale deed dated 30.1.1986 by Smt. Bhago deceased in favour of defendants Nos.1 and 2 was unauthorized illegal and void as against the rights of the plaintiffs and for permanent injunction restraining defendants Nos.1 and 2 from interfering in the possession of plaintiffs over the same.

Having been put to notice, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the plaintiff and defendant no.3 are the owners and in possession of the suit land? OPP.
2. Whether the sale deed dated 30.1.86 executed by Bhago deceased in favour of defendants nos.1 and 2 is illegal and void? OPP.
3. Whether the suit is not maintainable in the present form? OPP.
4. Whether the plaintiffs has no case of action to file the present suit? OPD.

5. Whether the plaintiff is debarred from filing the present suit by his own act and conduct? OPD.
6. Whether the plaintiff has no locus-standi to file the suit? OPD.
7. Whether the plaintiff is entitled to the declaration and permanent injunction was prayed for? OPP.
8. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that plaintiffs have duly proved their case. The entire case of the defendants-appellants was based on a sale-deed Ex. P1 dated 30.1.1986. Ex.P1, was declared to be illegal, null and void. Accordingly, the suit for declaration filed by the plaintiff-respondent was decreed by the learned trial Court, vide its impugned judgment and decree dated 22.8.1988.

Feeling aggrieved, defendants filed their first appeal, which also came to be dismissed by the learned first appellate court, by passing the impugned judgment and decree dated 12.12.1990. Hence this second appeal, at the hands of the unsuccessful defendants. The appeal was admitted for regular hearing vide order dated 13.5.1991 passed by this Court. That is how, this Court is seized of the matter.

Heard learned counsel for the parties.

A bare combined reading of both the impugned judgments and decrees passed by both the learned courts below would make it crystal clear

that defendants-appellants had no case right from day one. They miserably failed to prove their pleaded case, by leading cogent and convincing evidence. On the other hand, plaintiffs-respondents duly proved their case. It has been established on record that Smt.Bhago, after executing earlier sale-deed dated 17.6.1970 for 2K-4M, was left with ownership of 2K-4M only. Thus, she could not have sold the suit land measuring 4K-6M in favour of the defendants-appellants by way of sale-deed dated 30.1.1986. When confronted with this factual as well as legal aspect of the matter, learned counsel for the appellants had no answer and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that both the learned courts were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

It is the settled proposition of law that no one can pass on a better title than he himself owns. It is also not in dispute that Smt.Bhago was not the owner of the suit land, which she sold in favour of the appellants by way of sale-deed dated 30.1.1986 Ex.P1. Once the vendor of the defendants-appellants was herself not the owner of the suit land, she could not have passed on a better title in favour of the appellants. In this view of the matter, it can be safely concluded that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of

case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 11 and 12 of its impugned judgment, which deserve to be noticed here, read as under:-

“The only dispute in this case stressed by the learned counsel for the appellants is that the sale effected by Smt. Lello Jito and Khushia (husband of Bhago) of the land measuring 6k 8M to Mehar Singh Naranjan Singh and Partap Singh is not established on the record as no such sale deed is forthcoming. The learned counsel submitted that no reliance can be placed on the copy of the mutation Ex.P.3 to prove the said title of Naranjan Singh, Mehar Singh and Partap Singh. According to the learned counsel for the appellants if that sale is excluded then the sale affected by Bhago in favour of defendants no.1 and 2 on 30.1.86 is with in her share. The learned counsel for the appellants argued that the mutation does not confer any tittle. So the mutation copy of which is Ex.P.3 does not ipso facto prove the sale of land measuring 6 K 8 M by Leelo Jito and the husband of Bhago. The learned counsel relied upon the authorities cited as 1988 P.L.J. 185 in the Chand Singh Vs.Pritam Singh 1985 (2) P.L.R. 440 in re, “Manphool Singh Vs. Sampat & Others” and 1982 P.L.J. 261 in re, “Gram Sabha Solina Vs.Mahar Singh and another”. The cited authorities are distinguishable on facts as in the distant case the mutation itself did not confer any title but the mutation was based upon the sale deed executed by Leelo Jito and Khushia dated 25.1.60. The copy of mutation is admissible and it reveals that Khushia husband of Bhago had appeared before the revenue officer and admitted the sale and on the basis of that admission the mutation was sanctioned. In this respect I rely upon AIR 1940 Lahore 118 in re.,Nizam Ud.din Vs. Fateh Din” and 1989 P.L.J. 15 in re Gurdial Singh

Vs.Chhajja Singh”

So from the copy of mutation ex.P.3 the said sale of land measuring 6 K 8M is restablished on the record. In view of the said sale and further sale by Leelo of land measuring 2K 4M vide sale deed dated 17.6.70 smt. Bhago was left with title only in the land measuring 2K 4M and as such she could not sell the land measuring 4 K 6M in favour of the appellants as that land in the excess of her share to the extent of 2 K 2M. So as such these issues were rightly decided by the learned trial court and these findings are also affirmed.”

During the course of arguments, learned counsel for the appellants could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286*** and ***Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.***

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

24.4.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No