

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

Date of Decision: 05.12.2017

1. RSA No.1434 of 2016(O&M)

Gian Singh KandolaAppellant

Versus

Bawa Singh and others ... Respondents

2. RSA No.1435 of 2016(O&M)

Gian Singh KandolaAppellant

Versus

Bawa Singh and others ... Respondents

3. RSA No.1550 of 2016(O&M)

Gian Singh KandolaAppellant

Versus

Bawa Singh and others ... Respondents

4. RSA No.1563 of 2016(O&M)

Gian Singh KandolaAppellant

Versus

Bawa Singh and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Vivek Sethi, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, RSA No.1434 of 2016 titled
Gian Singh Kandola Vs. Bawa Singh and others, RSA No.1435

of 2016 titled Gian Singh Kandola Vs. Bawa Singh and others, RSA No.1550 of 2016 titled Gian Singh Kandola Vs. Bawa Singh and others and RSA No.1563 of 2016 titled Gian Singh Kandola Vs. Bawa Singh and others are being disposed of. Facts are being taken from RSA No.1434 of 2016.

[2]. Plaintiff has preferred these appeals against the judgments and decrees passed by the Courts below in a suit for declaration and permanent injunction. Plaintiff alleged that he along with defendants No.1 to 7 are owners in possession of 9 kanals, 16 ½ marlas, out of 82 kanals, 13 marlas of land and the sale deed dated 09.04.2003 executed by Bawa Singh (defendant No.1) in favour of defendants No.8 to 10 was illegal, null and void. Consequent mutation sanctioned in pursuance thereof was also challenged. Permanent injunction was also sought, restraining defendants No.8 to 10 from alienating and creating any encumbrance over the suit property.

[3]. The suit was contested by the defendants.

[4]. Plaintiff got examined himself as PW 1 by tendering into evidence his affidavit Ex.PW1/A. Raj Kumar, Lambardar was examined as PW 2 who tendered into evidence his affidavit Ex.PW2/A. Evidence of the plaintiff was closed by order. Defendants examined Sucha Singh (attorney) as DW 1 who tendered into evidence his affidavit Ex.DW1/A. Rakesh Kumar,

Deed Writer was examined as DW 2 who tendered into evidence his affidavit Ex.DW2/A and thereafter, evidence of the defendants was closed.

[5]. On 24.08.2006, an additional issue was framed to the effect:-

“1A. Whether the sale deed in dispute is collusive in nature if so its effects? OPP.”

[6]. Trial Court took up issues No.1 to 5 and 1-A together. The onus of these issues was on the plaintiff. Plaintiff only examined himself as PW 1 by tendering into evidence his affidavit Ex.PW1/A and Raj Kumar, Lambardar as PW 2 who tendered into evidence his affidavit Ex.PW2/A. The aforesaid witnesses never turned up for cross examination and therefore, they could not be cross examined by the defendants. Since there was no legal evidence on record, therefore, the trial Court proceeded to dismiss the suit under Order 17 Rule 3 CPC. Plaintiff remained unsuccessful before the Lower Appellate Court as well.

[7]. Perusal of the file would show that the suit was filed on 15.12.2003. Issues were framed on 11.09.2004. Thereafter, the case was adjourned for evidence of the plaintiff on many occasions, but the plaintiff could not produce his evidence. On 06.12.2006, the evidence of the plaintiff was closed by order of

the Court. Plaintiff filed revision petitions i.e. CR Nos.3744, 3745, 3746 and 3747 of 2007 against the said order in the High Court and the same were dismissed by the High Court on 14.09.2012. In the light of aforesaid, even if, an application for additional evidence filed by the appellant before the Lower Appellate Court was not decided, the same was of no avail as the order dated 06.12.2006 closing the evidence of the plaintiff was unsuccessfully assailed by the plaintiff in the aforesaid revision petitions which were dismissed on 14.09.2012 by the High Court.

[8]. Perusal of the record would show that on 16.04.2005, no PW was present despite adjournment on previous occasion, nor affidavit of the plaintiff was tendered. Adjournment was requested and the same was granted by adjourning the case to 04.06.2005. On 04.06.2005, affidavit of one of the PW was tendered and the case was adjourned to 27.08.2005 for cross examination of the witness as well as remaining evidence of the plaintiff. On the adjourned date i.e. 27.08.2005, no PW was present and the plaintiff undertook to conclude his entire evidence on the next date, failing which the evidence of the plaintiff was to be closed by deemed fiction i.e. by order of the Court. In view of undertaking given by the plaintiff, the case was adjourned to 28.10.2005 for cross examination of plaintiff

witness as well as for remaining entire evidence of the plaintiff.

[9]. On the adjourned date i.e. 28.10.2005, two applications were filed i.e. under Section 10 CPC as well as under Order 6 Rule 17 CPC. The application under Order 6 Rule 17 CPC was filed by the plaintiff for adding line at the end of Para No.8 i.e. “The alleged sale deed is collusive one and has been executed by the defendants No.8, 9 and 10 in connivance with each other only to grab the share of the plaintiff. Thus the alleged sale deed has got no effect upon the legal rights of the plaintiff” and also to add following at the end of para No.9 i.e. “that the alleged sale deed is collusive one”. The application was allowed subject to payment of cost of Rs.500/- vide order dated 13.03.2006. The case was adjourned to 17.05.2006 for filing amended plaint on 17.04.2006. After filing of amended plaint and amended written statement, additional issue No.1-A was framed on 24.08.2006. Ultimately, on account of non-production of PWs, request for adjournment was allowed subject to last opportunity for leading plaintiff evidence. Learned counsel for the plaintiff was directed to supply the copies of affidavits to be tendered in evidence to the learned counsel for the defendants before the adjourned date i.e. 06.12.2006.

[10]. On 06.12.2006, no PW was present. Even the copies of the affidavits as directed by the Court on previous date were not

handed over to learned counsel for the defendants. On earlier occasion also i.e. on 27.08.2005, the Court had allowed the adjournment subject to furnishing of undertaking by the learned counsel for the plaintiff that in case, he failed to conclude the evidence on the next date, the same shall be deemed to be closed by order of the Court. While dismissing the revision petitions i.e. CR Nos.3744, 3745, 3746 and 3747 of 2007, this Court has already upheld the order dated 06.12.2006 and by relying upon **M/s Shiv Cotex Vs. Tirgun Auto Plast P. Ltd. and others, (2011) 9 SCC 678**, dismissed the revision petitions.

[11]. In view of above, judgments and decrees passed by the Courts below cannot be faulted with. No law point worth cognizance is involved in the present appeals and the same are accordingly dismissed.

05.12.2017

prince

Whether Reasoned/Speaking

Whether Reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No