

RSA No. 2434 of 2016 (O&M)

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

**RSA No. 2434 of 2016 (O&M)
Date of Decision: 4.5.2017**

Union of India

.....Appellant

Vs.

Ashok Kumar and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Chetan Mittal, Sr. Advocate with
Mr. Vivek Singla, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful plaintiff-Union of India ('UOI' for short), has approached this Court by way of present regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby civil suit No. 641/2000 titled as Union of India Vs. Ashok Kumar and others filed by the present appellant for declaration, wherein sale deed No. 329 dated 16.5.1964 as well as sale deed No. 4837 dated 21.7.1998 were unsuccessfully challenged and the suit was dismissed by the learned trial court along with two other civil suits bearing civil suit No.84 of 2007 (Ashok Kumar Vs. Paramjit Kaur and others) and civil suit No. 85 of 2007 (Major Harmohinder Singh (deceased) through legal heirs Vs. Ashok Kumar and others), qua the same suit property, vide impugned judgment and decree

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dated 17.8.2007 and first appeal of UOI was also dismissed by the learned District Judge, vide his impugned judgment and decree dated 14.5.2010.

Although this case has a long and chequered history, however, succinctly put, facts recorded by the learned trial court in para 6 and 7 of its impugned judgment, would suffice for the purpose of decision of the instant appeal and the same read as under:-

“The third suit has been filed by Union of India against Ashok Kumar for declaration to the effect that sale deed dated 21.7.98 allegedly executed by defendant No.4 (Harmohinder Singh) in favour of defendants No.1 to 3, is a forged and fabricated document. No sale deed is valid as the land falls within the area of cantonment. Further, the suit is for permanent injunction restraining the defendants, their agents, servants, attorneys, from interfering into the peaceful possession of the plaintiff and restraining the defendants from further alienating the property. The third relief has been claimed for mandatory injunction, directing the defendants to hand over the peaceful possession to Army Authorities. The brief facts of the case are that the plaintiff is owner of property bearing No.16, Mall Road, Jalandhar Cantt, measuring 3.84 acres Survey No. 28, Type No.B-III. This area is meant for Army Personnels. The area has been sold by defendant No.4 as alleged by defendants No.1 to 3 knowing fully that defendant No.4 has no right to alienate the property in question which is a defence

property to anybody else. No consideration was passed. The plaintiff is Sub Area Commander and is custodian of the defence land. Even otherwise, the registration of the sale deed is forged and fabricated document as it relates to the Army property which is more than worth rupees six to seven crores having a big posh bungalow. The sale deed is for a meagre amount of Rs. 4,50,000/-. The persons who were already holding this property was having only occupancy rights. The Sub-Registrar was not competent to register the sale deed. The sale deed has been registered by violating all the norms of law, so the sale deed is null & void as far as rights of the plaintiff are concerned.

The written statement was filed by defendants No.1 to 3. They took preliminary objections that the suit is hopelessly barred by limitation. The suit is not maintainable. The suit is bad for non-joinder and mis-joinder of necessary parties. The property originally was purchased from Jugal Kisore son of Lachhman Dass and Jugal Kishore purchased this property from Lalman Dass. This property was an ancestral property inherited by Lalman Dass Aggarwal from his ancestors. The property was sold for Rs. 30,000/-. The sale deed was executed in favour of Late Major Harmohinder Singh and his mother Shavinder Kaur. The same entered at Sr. No. 329 having jild No. 1353 dated 16.5.64 Sub Registrar, Jalandhar and the mutation was

sanctioned to that effect by the office of Defence Estate Officer, Jalandhar Circle. Moreover, the plaintiff has concealed material facts. The answering defendants are owners in possession of the property in dispute as per sale deed dated 22.7.98 having registration No. 4837. The defendants No.1 to 3 have purchased this property by paying the amount through cheques amounting to Rs. 4,50,000/- which has been received and encashed by the defendant no.4. On merits, they denied each and every para of the plaint. They put the same case that how the property was earlier owned by Lala Lalman Dass who transferred the rights to Jugal Kishore and Jugal Kishore transferred the rights to Harmohinder Singh in 1964 and from defendant No.4, defendants No.1 to 3 have purchased the rights. In these circumstances, the defendants No.1 to 3 are owners in possession of the property as per the valuable rights. Moreover, the sale deed is a genuine document. In the Cantonment Area, thousands of civilians are residing. It cannot be said that Cantonment Area is purely an Army area. It is notified Cantonment by the Central Government. The property is not worth more than six crores of rupees. Harmohinder Singh had purchased this property for Rs. 30,000/- in 1964. Station Head Quarter Jalandhar Cantt. had assessed the value of this property vide letter No. 122/19/03 dated 11.12.91 addressed to defendant No.4 to the tune of Rs. 3,51,466/-. The plaintiff has no

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right to ask the defendant No.4 that why the property was not sold for more than Rs. 4.5. lacs. Defendant No.4 has received full and final payment. The action of Sub Register is legal. Moreover, the defendants are protected u/s 41 of the Transfer of Property Act. The mutations in the name of defendant No.4 has been validly sanctioned by the Army Authorities.”

Since the present appeal is arising out of civil suit No. 641/2000 (Union of India Vs. Ashok Kumar and others), facts of which have been noticed hereinabove, detailed facts of other abovesaid two civil suits are not being noticed here for the sake of brevity and also to avoid repetition. However, facts involved in both the abovesaid connected civil suits still need a brief reference. Major Harmohinder Singh through LRs, in his civil suit No. 85 of 2007, sought a declaration and injunction, contending that sale deed No. 4837 dated 21.7.1998 executed by him in favour of Ashok Kumar and others was null, void, illegal, forged and fabricated. On the other hand, Ashok Kumar, in his civil suit No. 84 of 2007, sought a decree for permanent and mandatory injunction, claiming himself to be a bonafide purchaser, vide valid sale deed No. 4837 dated 21.7.1998. Since all these three civil suits were pertaining to the same suit property, these were clubbed together by the learned trial court, vide its order dated 17.7.2007.

On completion of pleadings of the parties, learned trial court framed the following issues:-

- (1) Whether plaintiff Harmohinder Singh executed a legal and valid sale deed dated 21.7.98 in favour of defendant Ashok Kumar and his brother?OP Ashok Kumar

(2) If issue No.1 is proved, whether the sale deed is a result of fraud, misrepresentation and not binding on the rights of Major Harmohinder Singh and is without consideration? OP Harmohinder Singh & Union of India

(3) Whether the sale deed dated 21.7.98 cannot be executed in the manner which it has been executed, if so its effects? OP Union of India

(4) Whether Harmohinder Singh is entitled to the declaration as he prayed? OP Harmohinder Singh

(5) Whether Ashok Kumar is entitled to the relief of permanent injunction and possession as prayed by him regarding the property in dispute? O.P. Ashok Kumar

(6) Whether Union of India is entitled to the declaration that the sale deed dated 21.7.98 is null & void and forged and fabricated document? O.P. Union of India.

(7) Whether Union of India is entitled to the relief of permanent injunction and mandatory injunction as prayed by them? O.P. Union of India

(8) Whether the suit of Union of India is within limitation? OP Ashok Kumar

(9) Relief?

In order to substantiate their respective stands taken, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that UOI as well as Major Harmohinder Singh have failed to prove their pleaded cases whereas plaintiff-Ashok Kumar has duly proved his case, as pleaded in his

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civil suit No. 84 of 2007, however, only qua occupancy rights of old grant bungalow No. 16, the Mall, Jalandhar Cantt., and not qua the title of land underneath the bungalow. Accordingly, civil suit No. 641/2000 and civil suit No. 85 of 2007 were dismissed whereas civil suit No. 84 of 2007 filed by Ashok Kumar was decreed, vide common impugned judgment dated 17.8.2007.

Feeling aggrieved against the judgment and decree dated 17.8.2007 passed by the learned trial court, LRs of Major Harmohinder Singh filed their first appeal which came to be dismissed by the learned District Judge, vide his impugned judgment and decree dated 3.3.2009. Against the abovesaid judgment dated 3.3.2009 passed by the learned District Judge, legal representatives of Major Harmohinder Singh filed two separate regular second appeals before this Court bearing RSA No. 1863 of 2009 (Sandeep Kang and others Vs. Ashok Kumar) and RSA No. 1864 of 2009 (Paramjit Kaur and others Vs. Ashok Kumar and others), which came to be dismissed by this Court vide judgment dated 4.5.2009. The matter was taken to the Hon'ble Supreme Court, which was dismissed as withdrawn vide order dated 24.8.2009 passed in SLP 12405 of 2009. Thus, the abovesaid common impugned judgment dated 17.8.2007 passed by the learned trial court, deciding all the abovesaid three civil suits, attained finality up to the Hon'ble Supreme Court, at least qua civil suit No. 85 of 2007.

Learned District Judge, while deciding first appeal of UOI against the abovesaid judgment and decree dated 17.8.2007, filed vide civil appeal No. 187 dated 22.9.2007, arising out of civil suit No. 641 of 2000, referred in para 10 of the impugned judgment dated 14.5.2010 about the abovesaid judgment dated 3.3.2009 passed by the learned District Judge as

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well as judgment dated 4.5.2009 passed by this Court, dismissing the first and regular second appeals filed by the LRs of Major Harmohinder Singh. Feeling aggrieved against the impugned judgment and decree dated 14.5.2010 passed by the learned District Judge, dismissing its first appeal, UOI has approached this Court by way of present regular second appeal.

Heard learned senior counsel for the appellant.

Before proceeding further, it is pertinent to note here that although there was an inordinate delay of 2222 days in re-filing the appeal, yet the delay was condoned by this Court court vide order dated 24.1.2017, allowing CM No. 11065-C-2016. Similarly, delay of 162 in filing the appeal has also been condoned, with a view to decide the case on merits, instead of technicalities, including the delay.

Brief background of the case, which needs to be referred was that it was the case of old grant bungalow under the scheme known as 'Old Grant Scheme'. In the instant case, competent authority of UOI made a grant(allotment) for occupancy holding rights qua bungalow No. 16, The Mall, Jalandhar Cantt, in favour of Lala Das Mal @ Lalman Dass. Date of this grant/allotment was not available with the learned senior counsel for the appellant.

It is a matter of record that on the death of late Sh. Lalman Dass, suit property was transferred in the name of his son Sh. Jugal Kishore on 14.7.1933. Learned senior counsel for the appellant pointed out that for the grant of property like the suit property, inheritance was permissible. It is also pertinent to note here that old grant bungalows are located only in the cantonment areas throughout the country. Sh. Jugal Kishore executed sale deed dated 16.5.1964 in the name of two persons namely Smt. Shavinder Kaur wife of late Lt. General Bikram Singh and his son-Major Harmohinder

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Singh. After the death of Smt. Shavinder Kaur, her half share was also inherited by her son Major Harmohinder Singh.

Consequently, suit property was mutated in favour of Major Harmohinder Singh son of Lt. Gen. Bikram Singh, as per Will dated 29.3.1978 executed by Smt. Shavinder Kaur. Share of Smt. Shavinder Kaur came to be mutated in favour of her son Major Harmohinder Singh as per letter No. 701/832/R&D/DE/WC/88 dated 8th July, 1988, issued by Director General, DE, New Delhi. This document is available on record as Ex.D3 proved by the defendants-respondents in their evidence. After about 10 years of the abovesaid transfer in his favour vide Ex.D3 as per letter dated 8.7.1988, Major Harmohinder Singh executed registered sale deed No. 4837 dated 21.7.1998 in favour of Ashok Kumar and other-defendants. It was this sale deed No. 4837 executed on 21.7.1998 and registered on 22.7.1998, which became the bone of contention for initiation of this unwarranted and avoidable litigation.

From perusal of voluminous record, it seems that after execution of the abovesaid sale deed No. 4837 dated 21/22.7.1998, Major Harmohinder Singh turned greedy and took a complete somersault for extraneous considerations. He challenged possession of his vendees-Sh Ashok Kumar and others. When Ashok Kumar and others approached the local authorities, including authorities of District Administration, order dated 5.2.1999 was passed by the District Revenue Officer-cum-Collector, Jalandhar, protecting possession of the bonafide purchasers-Sh. Ashok Kumar and others. Major Harmohinder Singh approached this Court by way of CWP No. 11216 of 1999 (Harmohinder Singh Vs. State of Punjab and others), wherein present respondent Ashok Kumar was respondent No.4. This writ petition came to be dismissed by a Division Bench of this Court,

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vide its order dated 7.5.2002.

It is interesting to note that this Court has recorded that as many 12 litigations were between these parties, in its order dated 7.5.2002, while dismissing CWP No. 11216 of 1999. It also seems that the concerned officers/officials of the appellants had forgotten all these 12 litigations, civil as well as criminal, probably for the reason that real contest in these litigations was between Major Harmohinder Singh and present respondents. However, with the passage of time, these litigations have lost their significance.

So far as the case in hand is concerned, after hearing learned senior counsel for the appellant, careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that since the learned courts below have recorded their concurrent findings of facts, which have been found duly supported by sound reasons, instant appeal is without any merit and the same is liable to be dismissed, for the following more than one reasons.

A bare perusal of the abovesaid most material document (Ex. D3) will make it crystal clear that concerned authorities of the appellant have duly recognised the sale deed No. 329 dated 16.5.1964 executed by late Sh. Jugal Kishore in favour of Smt. Shavinder Kaur wife of Lt. Gen. Bikram Singh and her son Major Harmohinder Singh. It is so said, because language of Ex. D3 leaves no room for doubt in this regard and it reads as under:-

“Property mutated in favour of Major Harmohinder Singh s/o Lt. Gen. Bikram Singh on the death of Smt. Shivender Kaur wife of Lt. Gen. Bikram Singh as per her Will dated 29.3.1978 in view of

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Director General, DE, New Delhi. Letter No. 701/832/R&D/DE/WC/88, dated 8 July 1988. (Page 144, case file No. JRB-1C)”

Thus, by now, two transfers, .i.e. one by way of inheritance and another by way of sale deed, had been accepted and recognised by the authorities of the appellant-UOI. First transfer by way of inheritance was on 14.7.1933 in favour of Jugal Kishore on the death of Late Lal Das Mal @ Lalman Dass. Thereafter, transfer by way of sale deed dated 329 dated 16.5.1964 followed by transfer by way of inheritance vide abovesaid Ex.D3 were duly recognised and accepted by the concerned authorities of the appellant-UOI.

Since the transfer by way of sale deed dated 16.5.1964 was accepted as valid transfer by the concerned army authorities themselves, validity of this sale deed dated 16.5.1964 was not challenged. It came to be challenged for the first time vide present civil suit No. 641 of 2000, i.e. after more than long 36 years. When confronted with the abovesaid glaring and undisputed facts obtaining on the case file, to explain about the stand taken on behalf of UOI in this regard, learned senior counsel for the appellant had no answer and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their impugned judgments and decrees and the same deserve to be upheld.

However, although the learned trial court, in para 23 of its judgment, has rightly discussed the issue of occupancy rights of defendants-respondents qua the suit property, holding that property underneath bungalow No. 16 could not have been transferred by sale deed dated 21/22.7.1998, yet it deserves to be clarified here, as abundant precaution,

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that defendants-Ashok Kumar and others purchased only occupancy rights qua bungalow No. 16, the Mall, Jalandhar Cantt. and not the ownership of land underneath it. In fact, a careful perusal of the record would show that title of the appellant qua the land underneath bungalow No. 16 had never been in dispute at any point of time. Dispute here pertains only to the occupancy rights qua bungalow No. 16, on the basis of sale deed dated 21/22.7.1998 (Ex.DX). Under this peculiar fact situation obtaining on the record of the case, it can be safely concluded that the learned courts below committed no error of law, while passing the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, learned District Judge rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 10 of its impugned judgment, which deserve to be noticed here, read as under:-

“After giving thoughtful consideration to the submissions made by Counsel for both the parties, I find that the execution of the sale deed Ex.DX dated 21.7.1998 of the suit property, vide which the same has been sold by Major Harmohinder Singh to defendants No.1 to 3 has been proved. Consideration of Rs. 4,50,000/- which was given by defendants to Major Harmohinder Singh has also been proved. The sale deed bears not only signatures of Major Harmohinder Singh, but also his thumb impression. He is not an illiterate man and is a higher Military official, and thus, his plea that his signatures have been obtained on some

blank papers with fraud cannot be believed. Otherwise also, what for he has received an amount of Rs. 4,50,000/-. No evidence has been led by Major Harmohinder Singh to prove this factum of forgery played upon him. No explanation has come forward as to what for he has received Rs. 4,50,000/- from the defendants. The sale deed has been registered by Sub-Registrar, Jalandhar, only when the value of the suit property has been assessed by the competent authorities. The mutation of the same has also been sanctioned only with the intervention of the competent defence authorities. So, the trial court has rightly held that Major Harmohinder Singh has executed a legal and valid sale deed dated 21.7.1998 in favour of defendant Ashok Kumar and his brother, and, thus, the same is not a result of fraud and is a genuine document. So, the suit of the Union of India has been rightly dismissed. It is pertinent to mention here that this finding of the trial court has been upheld by Sh. Fateh Deep Singh, the then District Judge, Kapurthala, vide his judgment dated 3.3.2009 in other two appeals. This same finding has been upheld by the Hon'ble Punjab & Haryana High Court in Regular Second Appeals titled as 'Sandeep Kang and others Vs. Ashok Kumar and others' and 'Paramajit Kaur and others Vs. Ashok Kumar', vide judgment dated 4.5.2009."

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It is relevant to note here that appellant has miserably failed to prove its pleaded case, by leading cogent and convincing evidence. It goes without saying that appellant-UI being the plaintiff, onus was on it to prove its case, however, it failed to do so. Initial onus is always on the plaintiff to prove its case as per the pleadings. In the present case, although the plaintiff-appellant raised the plea of fraud against the defendants qua sale deed dated 22.7.1998, yet it miserably failed to discharge its onus to prove the plea of fraud. In such a situation, plaintiff-appellant was bound to fail. That is what has been held by the both the learned courts below.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

- 1) Chief Executive Officer Vs. Surendra Kumar Vakil and others, (1999) 3 SCC 555 (SC)
- 2) A.V. Papayya Sastry and others Vs. Government of A.P. And others, 2007 AIR (SC) 1546 (SC)
- 3) Arunima Baruah Vs. Union of India and others, 2007 (6) SCC 120 (SC)
- 4) Durlabh Singh Vs. Nahar Singh and another, 1991 (2) PLR 92 (P&H)
- 5) Khan Mohammad and another Vs. Rahisan and others, (RSA No. 3476 of 2016, decided on 3.3.2017)

Another equally important aspect of the matter is that defendant-respondent namely Ashok Kumar also filed his independent and separate suit for permanent injunction, vide civil suit No. 84 of 2007, as noticed hereinabove. It is also not in dispute that entire basis for suit for permanent injunction filed by Ashok Kumar was this very sale deed No. 4837 dated 21/22.7.1998. Set of facts were exactly the same and suit property was also the same. Had this sale deed No. 4837 would not have been there, there was no scope of this litigation. Thus, it becomes crystal clear that all the

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abovesaid three suits filed by the three different parties, including the present appellant-UOI, were revolving around the same sale deed No. 4837 dated 21/22.7.1998, Ex. DX.

It is also a matter of record that defendants in civil suit No. 84 of 2007 did not file any appeal against the impugned judgment dated 17.8.2007 passed by the learned trial court, whereby all the abovesaid three civil suits were decided together. As noticed above, civil court decree dated 17.8.2007 passed even in civil suit No. 85 of 2007 has also attained finality in favour of Ashok Kumar and others, as the abovesaid two regular second appeals were dismissed by this Court and SLP filed by the LRs of Major Harmohinder Singh before the Hon'ble Supreme Court was also dismissed as withdrawn.

It is also pertinent to note here that the issues framed by the learned trial court, noticed in the foregoing paragraph, were common in all the three civil suits. Same was the set of evidence led by the parties in all the three civil suits, which were decided together by the learned trial court. Keeping in view the abovesaid undisputed facts and circumstances of the case and also respectfully following the law laid down by the Hon'ble Supreme Court, in the cases referred to hereinabove, it is unhesitatingly held that the appellant has no case either on facts or in law and the impugned judgments and decrees deserve to be upheld, for this reason as well.

In fact, there were two basic and common features in all the abovesaid three civil suits. Firstly, it was the common sale deed No. 4837 dated 21/22.7.998, Ex.DX. Secondly, the suit property was also the same. Respondents-defendants in the present case were also common in all the three civil suits. Another common feature was that the question of title qua the land underneath bungalow No. 16 was not involved in any of the civil suits. These were the reasons that all the three suits were clubbed and

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decided together, on the basis of same set of evidence led by all the three parties and that too on common issues. Thus, the common findings recorded by the learned courts below would be having direct bearing on all the three civil suits.

During the course of hearing, learned senior counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments rendered by learned courts below. He also could not point out any question of law much less substantial question of law, which is sine qua non for entertaining a 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 regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. 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 present appeal is wholly misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

4.5.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No