

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

104

RSA-1510-2015(O&M)

Date of Decision:01.09.2017

Nachhatar Singh

.....Appellant

Versus

Nachhatar Singh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

**Present: Mr.Puneet Kumar Bansal, Advocate,
for the appellant.**

RAMESHWAR SINGH MALIK, J.(Oral)

Defendant No.2 is in regular second appeal against the judgments passed by both the learned courts below, whereby suit of the plaintiffs for declaration was decreed by the learned trial court, vide its impugned judgment and decree dated 04.10.2010 and first appeal of defendant No.2 was partly allowed by the learned first appellate court, vide its impugned judgment and decree dated 29.10.2014.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that plaintiffs and defendant No.1 are real brothers. The judgment and decree dated 26.09.1998 was passed in suit filed by defendant No.1 seeking declaration as against the present plaintiffs and their father Uttar Singh and they were declared owners in possession of the joint land in equal shares. The revenue authorities, instead of recording mutation in favour of the plaintiffs and defendant No.1,

sanctioned mutation in favour of defendant No.1 alone. An appeal was preferred by the plaintiffs challenging the said mutation order and the same was accepted by A.C. Ist Grade, Jalalabad, while passing orders dated 08.10.2003. When the plaintiffs approached the revenue officials for entering and sanctioning of mutation as per orders dated 26.09.1998 and 08.10.2003, it has come to the notice of the plaintiffs that defendant No.1 has executed sale-deed dated 08.09.2003 in favour of defendant No.2 and mutation No.3106 has already been sanctioned in favour of defendant No.2 on the basis of said sale-deed. The said sale-deed executed by defendant No.1 in favour of defendant No.2 has been challenged by the plaintiffs, as the same was executed in excess of share of defendant No.1 and subsequently, mutation No.3106 entered in the revenue record in favour of defendant No.2, has also been challenged, so far as the rights of plaintiffs are concerned.

Defendants were put to notice. Defendant No.1 did not appear despite service and he was proceeded against ex parte by the learned trial court vide its order dated 12.04.2005. However, defendant No.2 put appearance and filed his contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to declaration as prayed for?OPP*
- 2. Whether the plaintiff is entitled to permanent injunction as prayed for?OPP*
- 3. Whether the plaintiff has no locus-standi or cause of action to file the present suit?OPD*
- 4. Whether the plaintiff is estopped his own act and conduct from filing the present suit?OPD*

5. *Whether the present suit is legally not maintainable?OPD*

6. *Whether the suit of the plaintiff is false and plaintiff has concealed the material facts from the court? If so, its effect?OPD*

7. *Relief.”*

Both the parties produced on record their documentary as well as oral evidence with a view to prove their pleaded case. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiffs have duly proved their pleaded case by leading cogent and convincing evidence. Accordingly, suit for declaration filed by the plaintiffs was decreed by the learned trial court, vide its impugned judgment and decree dated 04.10.2010. Feeling aggrieved, defendant No.2 filed his first appeal which was partly allowed by the learned first appellate court, protecting the sale-deed Ex.D1 to the extent of 4 kanals 6 marlas because only this much land was owned by the vendor of defendant No.2. Accordingly, appeal was partly accepted by the learned first appellate court, vide its impugned judgment and decree dated 29.10.2014. Hence, this regular second appeal, at the hands of dissatisfied defendant No.2.

Heard learned counsel for the appellant.

It is a matter of record that vendor of the appellant was not the owner of land measuring 8 kanals 19 marlas, which he sold to the appellant vide sale-deed dated 08.09.2003 Ex.D1. Thana Singh son of Uttar Singh alias Avtar Singh, vendor of the appellant was owner only to the extent of 4 kanals 6 marlas land and the learned first appellate court has rightly accepted first appeal of the appellant, holding the sale-deed Ex.D1 to be

matter, no fault can be found with the cogent findings recorded by the learned Additional District Judge, while passing the impugned judgment and decree dated 29.10.2014 and the same deserve to be upheld.

It goes without saying that once the vendor of the appellant was not the owner for the land measuring 8 kanals 19 marlas, he could not have passed any better title in favour of the appellant. Share of the vendor of appellant in village Ratta Khera was only to the extent of 4 kanals 6 marlas. This was the reason that the learned first appellate court modified the decree of the learned trial court, partly allowing the first appeal of defendant No.2, holding him to be entitled to retain the land 4 kanals 6 marlas and the sale-deed Ex.D1 was set aside so far as it was pertaining to the excess area than 4 kanals 6 marlas.

The learned Additional District Judge considered every relevant aspect of the matter before passing the impugned judgment and decree. Findings recorded by the learned first appellate court cannot be said to be erroneous or illegal in any manner. Having said that, this Court feels no hesitation to conclude that the learned first appellate court was well within its jurisdiction to pass the impugned judgment and decree and the same deserve to be upheld, for this reason also.

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 in **Keshavlal Lallubhai Patel and others Versus Lalbhai Trikumlal Mills Ltd.**, 1958 AIR (SC) 512, Harjit Kaur (D) through LRs Versus Jangir Singh (D) through LRs and others, 2015 (52) RCR (Civil) 368 (P&H) and RSA No.3796 of 2015 (Inderpal Singh Versus Jugal Kishore and another), decided on 13.7.2017.

Before arriving at his judicious conclusion, the learned Additional District Judge has rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 11 to 14 of its impugned judgment, which deserve to be noticed here, read as under:-

“The most important evidence in the present case is the judgment and decree EX.P5 & Ex.P6. There is no dispute between the two parties regarding the passing of judgment and decree dated 26.09.98, vide which 1/3 share fell to the share of defendant No.1. Since the property involved in the said judgment and decree was divided into three equal shares and the property involved in the present case stands mentioned in column No.2 of the said decree Ex.P6, as such, it becomes clear that the share of defendant No.1 was only to the extent of 04 kanals 06 marlas, out of the property falling in village Ratta Khera. As such, the share of defendant No.1 described in the sale deed Ex.D1 to the extent of 1/4 share, out of total land measuring 35 kanals 19 marlas has wrongly been shown on the basis of Jamabandi for the year 1998-99 whereas, the judgment and decree passed by the court of Sh.J.S.Kang, Civil Judge (Jr.Division), Muktsar, dated 26.09.98 was passed only qua land measuring 12 kanals 18 marlas falling in village Ratta Khera. The land measuring 35 kanals 19 marlas as shown in the Jamabandi for the year 1988-99 in the document Ex.D3 was jointly land owned by father of plaintiffs and defendant No.1 along with his brothers but that entire land measuring 35 kanals 19 marlas was never inherited by plaintiffs and defendant No.1 along with their father Avtar Singh.

The learned lower court has rightly observed that plaintiffs and defendant No.1 were declared owners in

possession of total land measuring 68 kanals 18 marlas along with their father Avtar Singh and the suit land was shown to be owned and possessed by all the co-sharers jointly. It was further rightly observed by the learned lower court that a co-sharer cannot alienate more land than of his share in the joint property and if he does so, the last vendee has to suffer. This observation made by learned lower court was on the basis of ratio held in 1990, P.L.J., 177.

Although, it has been claimed by the present appellant that the sale-deed in question was got executed by appellant after going through the revenue record at the time of execution of sale deed but the fact remains that the defendant No.1 was not owner in possession of land measuring 08 kanals 02 marlas at the time when the sale deed in question was executed by defendant No.1 in favour of defendant No.2, as such, the defendant No.1 could not transfer a better title in favour of subsequent vendee, than he himself had. Since the share of defendant No.1 in the land in dispute was only over 04 kanals 06 marlas, as such, the land involved in the sale deed Ex.D1 to the extent of 08 kanals 19 marlas is in excess to the share of defendant No.1. Despite the fact that shares were rightly determined by the learned lower court, the relief of declaration declaring the sale-deed dated 02.09.2003 was wrongly ordered to be declared as illegal, null and void. Keeping in view the fact that defendant No.1 was owner in possession of land measuring 04 kanals 06 marlas on the basis of judgment and decree Ex.D5 and Ex.D6, the sale-deed Ex.D1 is ordered to be declared as null and void only to the extent, it was in excess of share of defendant No.1. Since the defendant No.1 was having his ownership rights over 04 kanals 06 marlas of land, as such, sale-deed Ex.D1 is held to be valid to the extent of 04 kanals 06 marlas out of the land involved in the sale-deed Ex.D1 whereas the land

in excess to the share of defendant No.1, beyond 04 kanals 06 marlas is held to be null and void.

It has come on record that sale-deed Ex.D1 was executed by defendant No.1 in favour of defendant No.2, the present appellant for a valid sale consideration and the defendant No.1 has not preferred to contest the present suit, as such, the present appellant shall be at liberty to claim the excess amount paid by him to defendant No.1 qua land in excess of share of defendant No.1, which was 04 kanals 06 marlas only. Keeping in view these observations, the appeal in question is partly allowed and the sale-deed Ex.D1, which was in excess to the share of 04 kanals 06 marlas is ordered to be set aside.”

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgment and decree passed by the learned first appellate court. He was also unable to refer to any question of law much less substantial question of law, 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 regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 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 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 above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

September 01, 2017
seema

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No