

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

RSA No. 1798 of 2015 (O & M)

Date of Decision:-07.03.2017

Jagjit Singh (unsound mind) through his father Gurcharan Singh alias Gurbachan Singh

...Appellant

Versus

Gurbinder Singh alias Dara Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Madan Sandhu, Advocate
for the appellant.

HARI PAL VERMA J.

The appellant-plaintiff (hereinafter called 'the plaintiff') has filed the present regular second appeal against the judgment and decree dated 22.9.2014 passed by learned Additional District Judge, Mansa, whereby his appeal against the judgment and decree dated 26.4.2014 passed by Additional Civil Judge (Sr. Divn.), Mansa, was dismissed.

Briefly stated, the plaintiff has filed the suit for permanent injunction with an averment that plaintiff Jagjit Singh is a person of unsound mind and is mentally upset. He has no knowledge of his good and bad and, therefore, he is living under the guardianship of his father Gurcharan Singh alias Gurbachan Singh. Thus, the present suit has been filed by the next friend of the plaintiff, namely Gurcharan Singh alias

Gurbachan Singh, who is father of the plaintiff. Plaintiff Jagjit Singh is owner in possession of the land measuring 44 Kanals as detailed in the head note of the plaint, plaintiff being of unsound mind, the land is being cultivated by his father Gurcharan Singh alias Gurbachan Singh. Plaintiff Jagjit Singh is not able to execute or register any Will. The defendants, who have no concern with the suit land, however, in connivance with each other and while taking advantage of unsoundness of mind of the plaintiff Jagjit Singh, are trying to transfer the suit land in their names. The defendants are also trying to take possession and to alienate the suit land to some other person, to which they have no right. Since the defendants were determined to do so, the necessity of filing the suit has arisen.

The suit was contested by the respondents/defendants (hereinafter called 'the defendants') by filing written statement taking preliminary objections that suit is not maintainable, the material facts have been concealed, the plaintiff is estopped by his act and conduct for filing the suit, the plaintiff has no locus standi and cause of action to file the suit. However, on merits, it is submitted that the plaintiff has not come to the Court with clean hands, because earlier Gurcharan Singh @ Gurbachan Singh himself has filed a suit against Jagjit Singh and in the said suit he has not mentioned anything regarding the unsound mind of his son Jagjit Singh. As such, it is proved that Jagjit Singh is mentally fit and is in fit state of mind. Jagjit Singh has given his 44 Kanals land on lease to the defendants and has obtained Rs.28,000/- per killa. In this manner Gurcharan Singh @ Gurbachan Singh wants to get a declaration to the effect that his son Jagjit

Singh is mentally upset so that he can grab his land.

From the pleadings of the parties, following issues were framed by the learned trial Court :-

- “1. Whether plaintiff is entitled to decree for permanent injunction as prayed for ? OPP
2. Whether plaintiff has no locus standi and cause of action to file the present suit ? OPD
3. Whether suit of the plaintiff is not maintainable in the present form ? OPD
4. Whether plaintiff is estopped by his own act and conduct to file the present suit ? OPD
5. Whether the plaintiff has not come to the Court with clean hands and has concealed the material facts from the Court ? OPD
6. Relief.”

Since Gurcharan Singh @ Gurbachan Singh, father of the plaintiff Jagjit Singh failed to prove the unsoundness of plaintiff Jagjit Singh, the learned trial Court dismissed the suit for more than one reasons i.e. (i) Gurcharan Singh @ Gurbachan Singh has failed to prove his case that Jagjit Singh is a person of unsoundness mind and is incapable to look after his land. No medical record was brought on record to prove that Jagjit Singh was a person of unsound mind. Though it was pleaded that Jagjit Singh is getting medical treatment since long but neither any medical bills nor any opinion of the doctor regarding unsoundness of Jagjit Singh were produced. (ii) Ex. DW1/C dated 6.5.2013 is the judgment and decree in the suit filed by Gurcharan Singh against Dalwar Singh and others, wherein, Jagjit Singh was also impleaded as one of the defendant, but it was nowhere

referred that Jagjit Singh is a person of unsound mind. The present suit has been filed on 11.8.2012 whereas the earlier suit was filed on 16.2.2012. Thus, the trial Court has disbelieved the plea of Gurcharan Singh @ Gurbachan Singh that his son Jagjit Singh is of unsound mind as the civil suit No.23 filed on 16.2.2012 and decided on 6.5.2013 (Ex.DW1/C) wherein Jagjit Singh was also one of the defendants, no such plea was taken in the suit that Jagjit Singh was a person of unsound mind.

Feeling aggrieved against the judgment and decree dated 26.4.2014, the plaintiff filed an appeal before the lower Appellate Court but the said appeal was also dismissed vide judgment and decree dated 22.9.2014.

It is in the aforesaid circumstances the appellant/plaintiff has filed the present regular second appeal.

Learned counsel for the appellant has raised the following substantial questions of law in the present appeal :-

- “a). Whether the learned both the Courts is result of mis-reading the evidence and material on record ?
- b). Whether the appellant has duly proved the suit by the cogent evidence, but same was ignored?
- c). Whether the impugned judgments and decrees passed by the learned both the Courts are against law and facts and the same are also based upon mere surmises and conjectures ?
- d). Whether the respondents has concealed the material facts from the Court and manipulated and twisted the entire facts?”

Learned counsel for the appellant has argued that the findings

recorded by the Courts below are based on surmises and conjectures. The pleadings have not been appreciated by the Courts below. In the earlier suit i.e. civil suit No.23 of 16.2.2012, Jagjit Singh was necessary to be impleaded as a party as at that time Jagjit Singh was not under the guardianship of his father Gurcharan Singh @ Gurbachan Singh. The defendants have taken a false and frivolous stand in the written statement and therefore the suit was liable to be decreed. Adequate opportunities were not granted to the plaintiff to adduce his entire evidence, which had caused great prejudice to him.

I have heard learned counsel for the appellant/plaintiff.

The suit has been filed by Jagjit Singh through his next friend namely Gurcharan Singh @ Gurbachan Singh, who is his father. Gurcharan Singh has stepped into the witness box as PW1 and in support of his evidence he has tendered his affidavit Ex.PW1/A, deposing therein that the defendants by taking advantage of unsoundness of mind of Jagjit Singh are trying to transfer and to take possession/alienate the suit land. It has been pleaded that Jagjit Singh is a person of unsound mind and has no knowledge of his good and bad. The present suit has been filed on 11.8.2012 but plaintiff Gurcharan Singh had earlier filed a suit i.e. civil suit No.23 dated 16.2.2012 against Dalwar Singh and others, wherein he also impleaded his son Jagjit Singh as one of the defendants, but in the said suit he had not made even a remote reference that Jagjit Singh is a person of unsound mind. The appellant/plaintiff has failed to adduce any medical evidence to support his plea that Jagjit Singh is a person of unsound mind.

There is no dispute that in order to become a person of unsound mind, long duration is not necessary but once the plaintiff has approached the Court with the plea that Jagjit Singh is a person of unsound mind, the plaintiff was required to prove this fact before the Court through medical evidence. No such evidence has been brought on record in support of this contention. It being a case of concurrent finding of facts recorded by the Courts below, no interference is warranted.

No substantial question of law is involved in the present regular second appeal. Therefore, the impugned judgments and decrees passed by the Courts below are upheld and the present regular second appeal is dismissed.

March 07, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No