

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4225 of 2016
Date of decision: 23.01.2017

Balwinder Singh

... Appellant

Vs.

Kashmir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Yogesh Goel, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned judgment and decree dated 16.04.2016 passed by learned Additional District Judge, Amritsar, whereby first appeal was dismissed, upholding the impugned judgment and decree dated 20.03.2014 rendered by learned trial Court, dismissing the suit for declaration filed by the plaintiff, seeking setting aside the sale deed dated 18.08.1986, raising the plea of fraud, plaintiff has approached this Court by way of instant regular second appeal.

Brief facts of the case, as noticed by learned trial Court in paras 2 and 3 of its impugned judgment, are that originally Sh. Khajan Singh son of Natha Singh, resident of Village Lidher, Tehsil Baba Bakala, District Amritsar was owner in possession of the land upto 2/5 share fully mentioned in the heading of the plaint, which might be treated as part of this para who was the father of plaintiffs No.1 and 2 grandfather of plaintiffs No.3 to 5. Sh. Khajan Singh executed a valid Will in favour of the plaintiffs on 24.07.2001 and Sh.

Khajan Singh had died on 04.01.2003 and on the basis of the abovementioned registered and valid Will, mutation of the land of Sh. Khajan Singh had been sanctioned in favour of the plaintiffs as per their shares as mentioned in the Will. That a few days back, the plaintiff Balwinder Singh had visited the Halqa Patwari to receive the copy of Jamabandi for his personal record and found that the disputed land bearing khasra No.22//26 (1-4) upto the share 5/12 had not been sanctioned in the name of the plaintiffs and on the other hand, the mutation of the land had been sanctioned in the name of the defendant and plaintiff No.1 asked the Halqa Patwari about the reason of this mutation and he told the plaintiff that the mutation had been sanctioned on the basis of a sale by which Sh. Khajan Singh had sold his share in favour of the defendant. The plaintiff requested to Halqa Patwari to issue him a certified copy of Jamabandi for the year 1983-84 and for the year 2003-04 and the same was by Halqa Patwari on 20.07.2009 and on the basis of that Jamabandi, it became clear to the plaintiffs that the disputed land had been transferred in the name of the defendant and the plaintiffs approached the defendant to show them the reason to become owner of the property of the plaintiffs but the defendant openly refused to hand over the document of title to the plaintiffs and the plaintiffs applied for certified copy of the said forged sale deed, in the office of Sub Registrar, Baba Bakala and the same was issued on 24.07.2009 and at that time, the forgery of preparing the sale deed on 18.08.1986 clearly came on the surface as Sh. Khajan Singh never executed any sale deed in favour of any person as per the family record of the plaintiffs.

The plaintiffs again approached the defendant to get the sale deed cancelled and transfer the property in the name of the plaintiffs but the defendant frankly refused to accede to the request of the plaintiffs and then the

plaintiffs approached the local police to register a case for preparing a forged document of the property of the plaintiffs against the defendant and the local police delayed the matter upto the date of filing the suit on one pretext or the other and finally, refused to register a case of forgery against the defendant and hence this suit for declaration and permanent injunction. The plaintiffs were owners in possession of the suit property and the defendant tried to forcibly and illegally interfere into the peaceful possession of the plaintiffs and he could only be estopped with the help of some prominent persons of the area and while the spot, the defendant again threatened to succeed in this mission on some appropriate time. The plaintiffs were owners in possession of the suit property as mentioned in the heading of the plaint, which might be treated as part of that para and the defendant had no right, title or interest in the suit property and he prepared a forged and fabricated sale deed dated 18.08.1986 which was also without consideration and Sh. Khajan Singh never signed or put his thumb impression on the sale deed and the thumb impression on the alleged sale deed was also an outcome of personation and on the basis of which he also got mutation sanctioned in his name of the suit property in collusion with the revenue staff and the said sale deed was liable to be cancelled and also the mutation and entries in the Jamabandies in the name of defendant were also liable to be cancelled and also needed to be corrected in the name of the plaintiffs, hence present suit.

Having been put to notice, defendant appeared and filed his 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 alleged sale deed dated 18.08.1986 is forged

and fabricated document? OPP

2. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed? OPP
3. Whether suit of the plaintiff is not legally maintainable in the present case? OPD
4. Whether the plaintiffs have not come to the Court with clean hands? OPD
5. Whether the plaintiff has no locus standi to file the present suit? OPD
6. Whether suit is bad for mis-joinder and non-joinder of the necessary parties? OPD
7. Whether the suit is hopelessly time barred? OPD
8. Whether the suit not properly valued for the purpose of court fee and jurisdiction? OPD
9. Relief

In order to substantiate their respective stands taken, both the parties brought on record their 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 the plaintiffs failed to prove their case by leading cogent evidence. Accordingly, suit of the plaintiffs was dismissed vide impugned judgment and decree dated 20.03.2014. Dissatisfied, plaintiff No.1 filed first appeal impleading the other plaintiffs as proforma respondents. However, the first appeal filed by the plaintiff-appellant also came to be dismissed by learned First Appellate Court vide impugned judgment and decree dated 16.04.2016. Hence this Regular Second Appeal at the hands of the plaintiff No.1, against the defendant, impleading other

plaintiffs as proforma respondents.

Heard learned counsel for the appellant.

It is not in dispute that the entire case of the plaintiff-appellant was based on the plea of fraud. This was the reason that learned Courts below rightly put the onus qua issues No.1 and 2 on the plaintiff-appellant. It also goes without saying that the allegation of fraud, being serious in nature, a heavy onus was on the plaintiff-appellant to prove said plea of fraud, by leading worth reliance evidence but the appellant failed to discharge his onus qua issues No.1 and 2. Having said that, this Court feels no hesitation to conclude that learned trial Court was well within its jurisdiction to dismiss the suit of the plaintiff-appellant in the absence of sufficient evidence available on record, thus, the impugned judgment and decree passed by learned trial Court were rightly upheld by the learned First Appellate Court.

The facts of the case as well as evidence available on record were reconsidered and re-appreciated by the learned First Appellate Court, in correct perspective, before recording its own cogent findings in support of just conclusion. Relevant findings recorded by learned First Appellate Court in paras 15 and 16 of the impugned judgment, at page 64 of the paper book, which deserve to be noticed herein, read as under: -

“Plaintiffs though challenged the sale deed on the ground of fraud but they have not produced any cogent evidence to prove the alleged fraud. Plaintiffs moved an application to get compared alleged thumb impression of Khajan Singh on the disputed sale deed dated 18.08.1986 with his thumb impression on Will dated 21.05.1993 which was allowed by ld. Lower Court vide order dated 04.07.2013, but plaintiffs did not examine any Hand Writing

& Finger Print Expert to prove that alleged thumb impression of Khajan Singh on the sale deed dated 18.08.1986 did not tally with his thumb impression on Will dated 21.05.1993. So, ld. Lower Court has rightly drawn an adverse inference against the plaintiff. The bald statement of plaintiff Balwinder Singh PW-2 who himself was not present at the time of execution of sale deed dated 18.08.1986 in favour of respondent/defendant by Khajan Singh is not sufficient to hold that sale deed dated 18.08.1986 is a forged and fabricated document. No doubt, DW-2 Malkiat Singh has stated in his cross-examination that it is correct that Khajan Singh did not appear before Sub Registrar to put his thumb impression on the sale deed in dispute. But on the basis of said single sentence of Malkiat Singh during his cross-examination itself is not sufficient to hold that said sale deed is a forged and fabricated document particularly when Malkiat Singh in the same cross-examination has stated four lines prior to said line that Khajan Singh thumb marked the sale deed and he has denied the suggestion given to him by counsel for the plaintiff that Khajan Singh did not appear before Sub Registrar to execute sale deed in dispute. Moreover, Malkiat Singh DW-2 has categorically stated in his examination-in-chief in affidavit form Ex.DW-2/A that Khajan Singh himself had executed sale deed dated 18.08.1986 Ex.D-1 for sale of the suit land in favour of defendant Kashmir Singh in his presence and in the presence of Lambardar Balwant Singh. He has also stated that Khajan Singh himself appeared before Sub Registrar Baba Bakala at the time of registration of sale deed

dated 18.08.1986 and appended his thumb impression upon it after admitting the same to be correct. He has proved the endorsement Ex.D-2 made by Sub Registrar Baba Bakala on the back side of the said sale deed. Moreover, presumption of truth is attached to the registered document regarding its execution as per Section 114 of Indian Evidence Act. The onus to prove alleged fraud was upon the plaintiffs, but plaintiffs have not produced any cogent evidence to prove alleged fraud. So, it cannot be said that sale deed dated 18.08.1986 is a forged and fabricated document got prepared by respondent/defendant Kashmir Singh by playing fraud upon Khajan Singh.

Appellant/plaintiff alleged himself to be owner of the suit land on the basis of Will dated 24.07.2001, but they have neither produced the said Will dated 24.07.2001 nor prove the same by leading cogent evidence. Moreover, when Khajan Singh himself was not owner of the suit land at the time of his death on 04.01.2003, then Will dated 24.07.2001 allegedly executed by Khajan Singh in favour of plaintiffs (though not proved on the file) itself does not create any title in favour of the plaintiffs regarding suit land. Hence, appellant/plaintiff along with other respondent/plaintiffs is not entitled to get declaration and permanent injunction as prayed for because defendant Kashmir Singh being owner in possession of the suit land has been rightly recorded as owner in possession of suit land in copy of jamabandi for the year 2003-04 Ex.D-4, copy of jamabandi for the year 2008-09 Ex.D-5 and copy of khasra girdawari for the year 2009-2010 to

2013 Ex.D-6.”

During the course of hearing, when confronted with the abovesaid categorical findings recorded by learned Courts below and to point out as to what was the illegality or perversity from which the abovesaid findings might be suffering, learned counsel for the appellant had no answer and rightly so, it being a matter of record. Since the case set up by the plaintiffs was revolving around the plea of fraud, alleging that the sale deed dated 18.08.1986 was based on misrepresentation and fraud, it was the bounden duty of the plaintiff to bring on record sufficient and cogent evidence, so as to discharge their onus on this crucial aspect of the matter. Since the plaintiff-appellant could not bring on record sufficient and cogent evidence in this regard and failed to prove the plea of fraud, learned First Appellate Court also did not commit any error of law, while passing the impugned judgment and decree, because of which both the impugned judgments and decrees passed by learned Courts below deserve to be upheld, for this reason also.

Had the plaintiff got a genuine cause of action, he would have filed an application for additional evidence along with his first appeal before the learned First Appellate Court, in case learned trial Court inappropriately denied the plaintiff to lead expert evidence. However, plaintiff-appellant failed to do that also for the reasons best known to him. Similar is the position before this Court. No application for additional evidence has been moved along with the instant appeal. Under these circumstances, it can be safely concluded that neither the plaintiff-appellant had any case on facts nor in law. In such a situation, concurrent findings of facts recorded by both the learned Courts below have been found based on sound reasons and the same deserve to be upheld, for this reason as well.

Learned counsel for the appellant could not point out any question of law, much less substantial question of law, which is sine qua non for entertaining the 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 **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 since no illegality or perversity has been found in either of the impugned judgments and decrees passed by the learned Courts below, the same deserve to be upheld. The Regular Second Appeal having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground 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.

[RAMESHWAR SINGH MALIK]
JUDGE

23.01.2017
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No