

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.292 of 2015 (O&M)
Date of decision: 17.03.2017

Amarjit Kaur and others

... Appellants

Vs.

Manjit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Onkar Rai, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present regular second appeal, at the hands of unsuccessful defendants, is directed against the impugned judgment and decree dated 05.08.2014 passed by the learned Additional District Judge, whereby first appeal of the appellants was dismissed and the impugned judgment and decree dated 23.07.2011 of the learned trial Court, decreeing the suit of plaintiffs for declaration, were upheld.

Brief facts of the case, as noticed by learned first appellate Court in paras 2, 3 and 4 of its impugned judgment, are that respondents No.1 to 4 filed a civil suit against the appellants and others on the averments that Gurinderpal Singh son of Chuhar Singh was attorney of plaintiffs No.1 and 2 vide registered

power of attorney dated 15.01.1996 and the suit was being filed through him. Defendants No.6 and 7 of the suit were minors and they were impleaded through their natural heir and next friend.

The case as set out in the plaint was that Baljit Singh and Ranjit Singh sons of Shiv Ram resident of Possi, Tehsil Garhshankar were owners and co-sharers in possession of land measuring 16 kanals 8 marlas out of the land measuring 98 kanals 8 marlas bearing khata No.49/121 to 123, 481/834 to 836, 829/1368 to 1373, khasra No.23//9, 22/5/4, 23/1, 10, 22//14, 22//7, 22//15, 25//2, 22/6, 22//17, 23/2, 22/16,23//11/1, 22//25/1, 22//24. It was submitted that said Baljit Singh and his brother were in exclusive possession of khasra No.22//17, 22//14,7, 23//2, 23//9 according to the jamabandi for the year 1970-71. They sold this land to plaintiffs No.1 and 2 and their brothers namely Gurdial Singh, Majhel Singh, Tarlochan Singh and Jarnail Singh in equal shares for ₹1500/- through registered sale deed dated 18.08.1973. The possession was delivered regarding specific khasra No.22//7, 17 and 14. It was submitted that copy of sale deed was handed over to the Halqa Patwari for entering of mutation and since the date of sale, plaintiffs no.1 and 2 and their brothers continued to be in possession of the suit property. Although factum of possession was being wrongly entered in the revenue record and it was not in the knowledge of the plaintiffs. At the time of execution of the sale deed, land measuring 4 kanals 14 marlas out of khasra No.22//17, 23/2, 22//16 was under mortgage by the vendors in favour of Mangal and Haria sons of Palla and they orally undertook to get it redeemed hence factum of mortgage was not mentioned in the sale deed dated 18.08.1973. It was submitted that some of the

vendors had died and their legal heirs had been impleaded in this case.

It was averred that since last about one month prior to the filing of the suit, defendants No.1 to 11, 16 to 25 in connivance with each other started threatening the plaintiffs to dispossess from the suit land by denying title of the plaintiffs. As such there casts clouds on the rights of the plaintiffs. The plaintiffs approached the Halqa Patwari through their father on 21.06.2000 and after obtaining copy of jamabandi, they came to know that there were wrong entries in the same, made on the basis of the sale deed which were subsequent to the sale deeds in favour of the plaintiffs. It was averred that the said sale deeds were sham transactions and they were illegal, null and void being result of fraud committed by vendors and vendees of these sale deeds. Hence these sale deeds did not have any effect on the legal rights of plaintiffs and defendants No.33 to 44 being prior in time. It was submitted that sale deeds were liable to be set aside. It was further pleaded that in case the defendants succeeded in dispossessing the plaintiffs from suit property, the plaintiffs shall suffer irreparable loss and injury. As the defendants denied legal title of the plaintiffs over the suit property, plaintiffs were compelled to file the present suit. So in the end it was prayed that suit of the plaintiffs be decreed for declaration to the effect that plaintiffs along with defendants No.33 to 44 were owners as co-sharers in possession of the land measuring 16 kanals 8 marlas out of 98 kanals of land as fully described in the head note in the plaint on the basis of registered sale deed dated 18.08.1973. It was also prayed that subsequent sale deeds executed be declared null and void and be set aside and the revenue entries be ordered to be corrected accordingly. Consequential relief of permanent

injunction was also sought for restraining defendants No.1 to 11, 16 to 25 from interfering in lawful possession of the plaintiffs over the suit property and alternative decree for joint possession be also passed along with costs of the suit.

Defendants were served. However, only defendants No.11, 18, 22 to 24 and 26 to 30 contested the suit. The remaining defendants failed to appear and they were proceeded against ex-parte. More than one written statements were filed, raising preliminary objections. One written statement was filed by defendant No.11. Another written statement was filed by defendants No.18 and 26. Defendants No.22 to 24 filed their own separate written statement. Another written statement was filed by defendants No.27 to 30. Plaintiffs filed their replications to the written statements filed by the defendants.

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

1. Whether the suit is filed by a duly authorized attorney? OPP
2. Whether Baljit Singh and Ranjit Singh sold 16 kanals 8 marls of land in favour of plaintiff No.1 as alleged in para No.3 of the plaint? OPP
3. Whether the plaintiff is entitled for declaration and consequential relief as prayed for? OPP
4. Whether the plaintiffs have locus standi to file the present suit?OPP
5. Whether the suit is maintainable? OPP
6. Whether the suit is within time? OPP
7. Whether sale deed dated 18.08.1973 is a forged and fabricated

document? OPD

7-A Whether Sham Singh and Nakshatar Singh sons of Piara Singh were bonafide purchasers of 2 kanals 14 marlas of land from Gurdass son of Labhu resident of village Possi through registered sale deed dated 17.11.1987? OPD

8. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties produced 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 have duly proved their case, by leading cogent and convincing evidence. Accordingly, suit of the plaintiffs was decreed by the learned trial Court, vide its impugned judgment and decree dated 23.07.2011. Feeling aggrieved, defendants No.22 to 25 filed their first appeal, which also came to be dismissed by the learned first appellate Court vide its impugned judgment and decree dated 05.08.2014. Hence this regular second appeal at the hands of defendants.

Heard learned counsel for the appellants.

A bare combined reading of both the impugned judgments and decrees passed by the learned Courts below would make it crystal clear that the plaintiffs have duly proved their case. Cogent and convincing evidence was produced by the plaintiffs to prove their pleaded case, which they successfully proved. On the other hand, defendants-appellants miserably failed to prove their case as per their pleadings. Having said that, this Court feels no hesitation to conclude that the learned Courts below committed no error of law, while

passing their respective impugned judgments and decrees and the same deserve to be upheld.

It is the settled proposition of law that onus to prove would be on the party who asserts. In the case in hand, although the defendants-appellants raised the plea of fraud, but miserably failed to prove the same. Defendants also failed to prove themselves to be bonafide purchasers. A heavy onus was on the defendants-appellants to prove their plea raised before the Court, but they failed to do so. Under these circumstances, it can be safely concluded that the learned Courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

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

- 1. *Sri Gangai Vinayagar Temple and another Vs. Meenakshi Ammal and others, 2015 (2) SCC (civil) 350 (SC).***
- 2. *Punjab Urban Planning and Dev. Authority Vs. M/s Shiv Saraswati Iron and Steel Re-Rolling Mills, 1998 AIR (SC) 2352 (SC).***
- 3. *Zarina Siddiqui Vs. A. Ramalingam alias R. Amarnathan, 2015 (1) SCC 705 (SC).***
- 4. *Swarn Singh Vs. Swarn Kaur and others, 2004 (2) RCR (Civil) 505 (P&H).***
- 5. *Santa Singh Vs. Tarsem Singh, 2010 (67) RCR (Civil) 520 (P&H)***
- 6. *M/s Machhi Ram Kishan Singh Sidhana, Rice Mills Vs. Sham Singh and others, 2015 (9) RCR (Civil) 506.***

Before arriving at its judicious conclusion, learned first appellate Court reconsidered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. The cogent findings recorded by the learned Additional District Judge in paras 25 and 26 of his impugned judgment, which deserve to be noticed here, read as under: -

“A careful perusal of the file goes to show that basis of the suit is the sale deed which the plaintiffs claim to have been executed in their favour by Baljit Singh and Ranjit Singh on 18.8.1973. This sale deed has been brought on record as Ex.P1. The original sale deed is on the file. In order to prove this sale deed, plaintiffs have also examined Dev Raj son of Gurditta as PW1 who is one of the marginal witness of the sale deed and also happens to be Lamberdar of the village. Moreover, it is a document which is more than 30 years old. Since it is registered document and one of its marginal witness has been examined, so there remains no doubt regarding genuineness of this document. Hence the case of the plaintiffs was rightly based on title deed which is in their favour. A perusal of this document go to show that 16 kanals 8 marlas of land have been sold out of 98 kanals 8 marlas of land by Baljit Singh and Ranjit Singh in favour of plaintiffs and their brothers. So definitely with this sale deed, plaintiffs became co-sharers in the suit property. It is also case of the plaintiffs that they have been handed over the copy of the sale deed to the patwari for entering it in the revenue record. Now if the properties are sold by said Baljit

Singh and Ranjit Singh subsequently they could sell the other property if they had out of the total land measuring 98 kanals 8 marlas but they have already been divested of ownership rights qua land 16 kanals 8 marlas. It is also settled law that even if a co-sharers hands over possession of particular khasra numbers but still vendee become a co-sharer in whole of the property which shall be subject to partition. Learned trial court has rightly taken into consideration all these facts while passing the decree.

I have also carefully considered submissions of the learned counsel for appellants wherein an effort is made to make out a case that subsequent vendees are bonafide purchaser but this court is of the considered opinion that had they checked up records of sub registrar, they would have found the sale deed dated 18.8.1973 vide which 16 kanals 8 marlas of land have been disposed off by Ranjit Singh and Baljit Singh, which is duly registered at serial no.1943 in the office of sub registrar. It has been held by Hon'ble Bombay High Court in case titled as Bajrang @ Hanumant Tatyaba Kakade Vs. Babubai and others, reported vide 1997(2) Civil Court Cases, 314 that unless the vendee is able to prove that he made usual enquiry into title of the vendor, such vendee cannot be said to be entitled to the protection under section 41 of Transfer of Property Act. So the facts of this case are also similar. Had the vendee checked up the record maintained by the office of sub registrar, he would have definitely come to know regarding sale

deed which is in favour of the plaintiffs and their brothers. In case titled as Mallappa Adivappa Hadpad Vs. Smt. Rudrawwa and others, reported vide 2003(3) Civil Court Cases, 192, it was a case where vendor purchased the property only on the basis of mutation entries without ascertaining as to who was real owner, it was held by Hon'ble Karnataka High Court that such purchaser cannot be said to have taken reasonable care or acted in good faith to claim protection of provisions of section 41 of the Transfer of property Act. Although the defendants have led evidence to prove that there are sale deeds in their favour but as vendors have already sold 16 kanals 8 marlas of land these sale deeds could not be said to be valid qua that much share of Baljit Singh and Ranjit Singh. It is also settled that former sale deed would always prevail on the later sale deed. Transferrer cannot prejudice the right of transferee by any subsequent dealing with the property. I take guidance from the case Narayan Madhavrao Warkhinde Vs. Mogiya Lalya reported vide 2010(4) Civil Court Cases, 79.”

Learned counsel for the appellants could not point out any patent illegality or perversity in either of the impugned judgments and decrees passed by the learned Courts below. He also could not raise 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 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 has been found in either of the impugned judgments and decrees passed by both 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**

17.03.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No