

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

**RSA No.3123 of 2015 (O&M)
Date of decision: 22.09.2017**

Jagjit Singh and another

... Appellants

Vs.

Harbhajan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Lalit Pathak, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful plaintiffs are in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby their suit for declaration, joint possession and permanent injunction was dismissed by the learned trial Court vide its impugned judgment and decree dated 23.04.2012 and their first appeal was also dismissed by the learned first appellate Court vide impugned judgment and decree dated 04.09.2014, upholding the judgment and decree of the learned trial Court.

Brief facts of the case, as noticed by the learned first appellate Court in paras 2 to 5 of the impugned judgment, are that plaintiffs challenged the legality and validity of judgment and decree dated 07.02.2007 passed in

Civil Suit No.109 of 05.05.2004 captioned as “Harbhajan Singh etc. Vs. Gurcharan Singh etc.” for specific performance of an agreement to sell dated 03.04.2003 and sale deed dated 27.10.2008 executed on the basis of said judgment and decree on the allegations that Khushhal Singh son of Karam Chand grandfather of plaintiffs had sold land measuring 86 kanals 47 marlas located at village Hussainpur vide sale deeds dated 11.08.1993, 13.08.1993, 06.09.1993, 07.09.1993 and after selling the aforesaid land, Khushhal Singh purchased suit land measuring 32 kanals comprised in khasra No.65//9/2/4-0, 12/1/4-0, 65//11/8-0, 20/8-0, 65//10/8-0 situated at village Kamalpur, Tehsil Sultanpur Lodhi in the name of Gurcharan Singh defendant No.3 and Karnail Singh. As such, the land in question was Joint Hindu Family, ancestral and coparcenary property.

It was further alleged that defendant No.3 Gurcharan Singh father of the plaintiffs was an addict. Defendants No.1 and 2 got one agreement to sell dated 03.04.2003 with regard to suit land measuring 16 kanals @ Rs.3,25,000/- per acre under the influence of liquor fraudulently without any consideration whereas defendant No.3 had got no right to transfer the land since the land in dispute was Joint Hindu Family, ancestral and coparcenary property and plaintiffs and defendant No.4 had got 1/3rd share each therein by birth.

It was further alleged that on 11.03.2009, defendants No.1 and 2 came to the disputed land to take forcible possession and thereafter, on inspection of the revenue record, it was revealed that the ‘Dakhal’ of the suit land had been given to defendants No.1 and 2 vide rapat No.346 dated 10.03.2009.

It was further alleged that the alleged agreement to sell dated

03.04.2003, judgment and decree dated 07.02.2007, sale deed dated 27.10.2008, rapat No.346 dated 10.03.2009 were illegal, null and void qua the right of plaintiffs.

Defendants were put to notice. Defendants No.1 and 2 appeared and filed their 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 suit is not maintainable in the present form? OPD
2. Whether the plaintiff has no locus-standi to challenge the judgment and decree? OPD
3. Whether this Court has no jurisdiction to entertain the present suit? OPD
4. Whether the suit is not properly valued for purpose of the court fee and jurisdiction? OPD
5. Whether the suit is barred by principal (principle) of re-judicata and u/o 2 Rule 2 CPC? OPD
6. Whether the suit is bad for mis-joinder of necessary parties? OPD
7. Whether the suit property is joint Hindu family and coparcenary property in the hands of defendant No.3? OPP
8. Whether the agreement to sell dated 03.04.2003 and sale deed dated 27.10.2008, are wrong and illegal and without consideration, being results of fraud and are liable to be set aside? OPP
9. Whether the plaintiff is entitled to declaration as prayed for? OPP
10. Whether the plaintiff is entitled to joint possession as prayed for? OPP

11. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
12. Relief.

In order to prove their respective stands taken in their pleadings, 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 plaintiffs have failed to prove their pleaded case for want of cogent and sufficient evidence. Accordingly, their suit for declaration, joint possession and permanent injunction was dismissed by the learned trial Court vide its impugned judgment and decree dated 23.04.2012. Plaintiffs felt aggrieved and filed their first appeal, which also came to be dismissed by the learned Additional District Judge vide impugned judgment and decree dated 04.09.2014. Hence this regular second appeal at the hands of unsuccessful plaintiffs.

Heard learned counsel for the appellants.

Entire case of the plaintiffs-appellants was revolving around one basic issue, as to whether the suit property was ancestral in the hands of their grandfather late Sh. Khushhal Singh. However, a bare reading of both the impugned judgments and decrees passed by the learned Courts below will make it crystal clear that the plaintiffs miserably failed to prove the suit property in the hands of late Sh. Khushhal Singh, as ancestral in nature. The plaintiffs could not connect purchase of suit land by their grandfather Sh. Khushhal Singh in village Kamaalpur in the name of Gurcharan Singh and Karnail Singh, out of the amount of sale consideration of sale deeds dated 11.08.1993, 13.08.1993, 06.09.1993 and 07.09.1993. Gurcharan Singh defendant No.3 was none else,

but father of the plaintiffs-appellants and he was son of late Sh. Khushhal Singh.

Plaintiffs-appellants were presuming too much in their favour that the moment they produced on record the abovesaid sale deeds, the learned trial Court would assume that the suit land was purchased by Sh. Khushhal Singh out of the sale proceeds pursuant to the abovesaid sale deeds. Appellants being the plaintiffs, onus was on them to prove their pleaded case by bringing on record relevant and cogent evidence. However, they failed to do so, for the reasons best known to them. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well justified in recording their concurrent findings of facts and the impugned judgments and decrees passed by the learned Courts below deserve to be upheld.

Before arriving at its judicious conclusion, learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned Additional District Judge in paras 24 to 31 of the impugned judgment, which deserve to be noticed here, read as under: -

“During the course of arguments, there is no denial from the fact that defendants No.1 and 2 had brought a civil suit for possession by way of specific performance of an agreement to sell dated 03.04.2003 by defendant No.3 Gurcharan Singh qua 16 kanals of land comprised in khasra No.65//9/2/4-0, 12/1/4-0, 65//11/8-0, 20/8-0, 65//10/8-0 situated at village Kamalpur, Tehsil Sultanpur Lodhi, District Kapurthala which was contested by defendant No.3

Gurcharan Singh and was decreed vide judgment and decree dated 07.02.2007 proved on record as Ex.D2. Appeal against the same by defendant Gurcharan Singh has been dismissed by learned District Judge, Kapurthala vide its judgment dated 17.09.2007 proved on record as Ex.D3.

The fact that in an execution of the impugned judgment and decree, sale deed dated 27.10.2008 has been executed in favour of defendants No.1 and 2 on behalf of defendant No.3 by Local Commissioner proved on record as Ex.D5 and thereafter symbolic possession of the suit land has been delivered to defendants No.1 and 2 by revenue authorities vide rapat No.346 dated 10.03.2009 proved on record as Ex.D6 is not controverted on record.

Plaintiffs have assailed the impugned agreement to sell dated 03.04.2003, impugned judgment and decree dated 07.02.2007, impugned sale deed dated 27.10.2008 and rapat No.346 dated 10.03.2009 on the pretext that since the suit property was Joint Hindu Family, ancestral and coparcenary property in the hands of Gurcharan Singh and plaintiffs have got right therein by birth being son of defendant No.3, so defendant No.3 had got no right to enter into impugned agreement to sell without any legal necessity.

The foremost question requires to be scrutinized is whether the plaintiffs have been able to prove on record the suit property to be Joint Hindu Family, ancestral and coparcenary property? The answer is certainly in negative.

No doubt, the plaintiffs have proved on record the sale deeds dated 11.08.1993, 13.08.1993, 06.09.1993 and 07.09.1993 by Khushhal Singh grandfather of plaintiffs proved on record as Ex.P4, Ex.P6, Ex.P10 and mark A but the fact pleaded by plaintiffs that Khushhal Singh purchased suit land in the name of his sons Gurcharan Singh and Karnail Singh by sale of the said land at village Hussainpur, has not been proved on record. Though the plaintiffs have proved on record Ex.P1 Khatauni of land in possession of Khushhal Singh, yet from the said Khatauni, the land in question cannot be connected with the said land.

There is nothing on record to suggest that Khushhal Singh purchased suit land at village Kamaalpur in the name of Gurcharan Singh and Karnail Singh from the sale consideration of sale deeds dated 11.08.1993, 13.08.1993, 06.09.1993 and 07.09.1993 as detailed above. Even the sale deeds in the name of Gurcharan Singh and Karnail Singh have been proved on record to deduce the fact that sale consideration was provided by Khushhal Singh. So in absence of the proof of the same, the suit land has not been proved on record to be Joint Hindu Family, ancestral and coparcenary property being inherited by Gurcharan Singh father of plaintiffs from their grandfather Khushhal Singh. As such, the suit property was rightly held to be separate property of Gurcharan Singh. So the plaintiffs have got no right to challenge the impugned sale deed dated 27.10.2008 proved on record as Ex.D5 executed on the basis of a legal and valid

judgment and decree dated 07.02.2007 proved on record as Ex.D2.

The instant suit seems to be collusive between plaintiffs and defendant No.3 to thwart the impugned sale deed dated 27.10.2008 executed in favour of defendants No.1 and 2 on the basis of judgment and decree dated 07.02.2007 out of the greed after the father of plaintiffs lost the legal battle before civil court.

The argument of learned counsel for the appellants that the plaintiffs have wrongly been non suited on the pretext that PW1 Jagjit Singh one of the plaintiffs did not subject himself for his further cross-examination to shatter his testimony by defendants in further cross-examination hold no substance. Since no cogent explanation has been furnished on record for non appearance of PW1 Jagjit Singh for his further cross-examination, so the learned civil court rightly drawn adverse inference against plaintiff.”

It is a matter of record that although appellant-plaintiff No.1 Jagjit Singh examined himself as PW1, but he did not make himself available for his cross-examination and that too for no good reasons. In such a situation, his statement in the form of examination-in-chief would be hardly of any consequence. Plaintiffs-appellants also did not examine any revenue official along with the relevant record, so as to prove the suit property to be ancestral in the hands of defendant No.3 Sh. Gurcharan Singh and before him, in the hands of his father late Sh. Khushhal Singh. Under these undisputed facts and circumstances of the case, it can be safely concluded 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, for this reason also.

It has also gone undisputed on record that in the earlier round of litigation, defendant No.3 lost upto the first appellate Court about this very suit land. Initially, defendant No.3 entered into an agreement dated 03.04.2003 with defendants No.1 and 2. Thereafter, defendants No.1 and 2 filed suit for specific performance of agreement to sell, which was decreed by the learned trial Court vide its judgment and decree dated 07.02.2007 Ex.D2. First appeal of defendant No.3 namely Sh. Gurcharan Singh was also dismissed by the learned District Judge vide judgment dated 17.09.2007 Ex.D3.

Defendants No.1 and 2 sought to execute the abovesaid decree, which came to be executed in their favour by execution of sale deed dated 07.10.2008 Ex.D5 and possession of the suit property was also delivered to them vide rapat No.346 dated 10.03.2009 Ex.D6. Appellants miserably failed to produce any contrary evidence, so as to enable the learned Courts below to record any findings in their favour, holding that the agreement to sell, decrees passed by the learned Courts below as well as the sale deed were null and void. Under these circumstances, plaintiffs were bound to fail. That is what has been held by both the learned Courts below, while recording their concurrent findings of facts and the impugned judgments and decrees deserve to be upheld, for this reason as well.

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He also failed to 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 the learned Courts below, the same deserve to be upheld. Present 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

22.09.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No