

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Regular Second Appeal No.4915 of 2015
Date of Decision: 03.07.2017

Harpal Singh and another ..Appellants

versus

Sukhdev Singh and others ..Respondents

CORAM: HON'BLE MR JUSTICE RAMENDRA JAIN

Present: Mr. Ashok Aneja, Advocate, for the appellants.

RAMENDRA JAIN, J.

This Regular Second Appeal is directed against the impugned judgments and decrees dated 18.4.2014 passed by learned Civil Judge (Junior Division), Ferozepur and dated 29.5.2015 passed by learned Additional District Judge, Ferozepur, dismissing the suit for possession filed by the appellant-plaintiffs.

In short, the appellant-plaintiffs filed a suit for possession averring that one Parduman Singh (now deceased), father of respondent no.3 Nishan Singh and husband of respondent no. 4 Mohinder Kaur, sold 08 Kanals of land situated in village Kutabdin Wala, representing himself to be the owner of the same vide sale deed dated 9.6.1998 to the appellant-plaintiffs for a consideration of Rs.1,40,0000/-. Earlier to it, the aforesaid vendor had also sold land measuring 08 Kanal of land comprising different killa numbers to respondent -defendant no.1 vide registered sale deed dated 28.5.1996, out of which, respondent-defendant no.1 further sold 7 Kanals-

19 Marlas of land in favour of respondent-defendant no.2 vide registered sale deed dated 29.5.2000. Thereafter, when the appellant-plaintiffs approached the concerned Patwari to enter the mutation in their favour qua the suit land measuring 8 Kanals on the basis of sale deed dated 9.6.1998 executed by Parduman Singh in their favour, they came to know that the aforesaid vendor Parduman Singh had already sold the land and thus, Parduman Singh was not the owner of the land measuring 8 Kanals on the date of execution and registration of the sale deed dated 9.6.1998 in their favour. Consequently, the appellant-plaintiffs approached Parduman Singh, their vendor, who assured them to redress their grievance by handing over possession to them. However, the said Parduman Singh vendor expired leaving behind 29 Kanals-4 Marlas land, being 1/4th share of land measuring 116 Kanals-16 Marlas, which was inherited by his son Nishan Singh respondent no.3 and his widow Mohinder Kaur respondent no.4. Therefore, in case Parduman Singh had left with no share in the suit land or in other words, had sold it to the appellant-plaintiffs without having any title, in that eventuality, the appellant-plaintiffs are entitled to the possession out of 29 Kanals-4 Marlas left by Parduman Singh vendor inherited by respondent nos. 3 and 4.

Upon notice, defendant nos.1 and 2, while admitting the fact that Parduman Singh had sold land measuring 8 Kanals to defendant respondent no.1, who further sold the land measuring 07 Kanals-19 Marlas to respondent-defendant no.2, denied all other pleas taken up in the plaint and prayed for dismissal of the suit.

Defendant-respondent nos. 3 and 4 in their separate written statement, while adopting the similar pleas, as taken by respondent

no.1 and 2 regarding preliminary objections, opposed the pleadings by averring that no sale deed, whatsoever, was executed by Parduman Singh in favour of the appellant-plaintiffs and thus, the sale deed, if any, in their favour was a result of fraud. They also prayed for dismissal of the suit.

The learned trial court, after framing issues and considering the evidence led by both the parties to their respective satisfaction, dismissed the suit vide impugned judgment and decree dated 18.4.2014 observing that the appellant-plaintiffs were not entitled for possession of the suit land measuring 8 Kanals 0 Marlas bearing Mustil No.34 Killa No.9(8-0), khewat no.28, khatoni no.59 situated in village Kutabdin Wala, Tehsil and District Ferozepur (hereinafter referred to as the "suit land") because Parduman Singh, their vendor, had left with no right, title or interest in the aforesaid land after execution of sale deed dated 29.5.2000 in favour of respondent-defendant no.2, therefore, he could not have transferred the better title than himself to the appellant-plaintiffs. The learned trial court also observed that the appellant-plaintiffs did not produce any record to prove that Parduman Singh had acquired more land on the basis of which the grievance of the appellant-plaintiff could be redressed. Being aggrieved, the appellant-plaintiffs preferred an appeal, which too was dismissed vide judgment and decree dated 29.5.2015 by the learned appellate court affirming the judgment and decree dated 18.4.2014 passed by the learned trial court,

The learned counsel for the appellants contended that both the learned courts below have erred in not considering the sale deed dated 9.6.1998, Ex.P1, executed by Parduman Singh, father of respondent no.3 Nishan Singh, husband of respondent no. 4 Mohinder Kaur in favour of the appellant-plaintiffs, especially when the respondents did not lead any

evidence to prove that the same was obtained by fraud. He further contended that the suit of the appellants-plaintiffs for possession along with their prayer for mesne profits, ought to have been decreed by both the courts below qua the land, inherited by respondent nos. 3 and 4, namely, Nishan Singh and Mohinder Kaur, son and widow of the deceased, respectively, as they were bound by the act and conduct of their predecessor Parduman Singh.

Having given my thoughtful consideration to the submission made by learned counsel for the appellants and the impugned judgments and decrees passed by both the courts below, I find that Regular Second Appeal, being without any merit, deserves to be dismissed in limine for the reasons to follow:-

In the instant appeal, the only question that survives for consideration is whether Parduman Singh was the owner in possession of the land measuring 08 Kanals, which he sold to the plaintiff-appellants vide registered sale deed dated 9.6.1998 Ex.P1. In the background of this case, this court has to scrutinise the entire evidence available on the record as also the findings recorded by both the courts below on the basis of oral as well as documentary evidence led by the parties.

The appellant-plaintiffs have tried to establish on the record that the sale deed dated 9.6.1998 was executed by Parduman Singh in their favour, but failed to produce any revenue record on the basis of which, it could be established that Parduman Singh was, in fact, the owner in possession of the land, which he had sold to them, whereas the defendant-respondents have produced on the record copies of jamabandis, Ex.DA and Ex.DB, showing the share of Parduman Singh in the revenue record. It is

apparent on the record that the alleged sale deed was executed on 9.6.1998 and jamabandi Ex.DB pertaining to the year 1997-98, shows that there were four more co-sharers along with Parduman Singh, namely, Gurjit Singh, Swaran Singh, Gurcharan Singh and Mukhtiar Kaur, according to which, the share of Parduman Singh comes to 8 Kanals 14 Marlas, including all numbers. It is evident from the record that the land comprising different khasra numbers was sold by Parduman Singh as co-sharer, to defendant-respondent no.1 Sukhdev Singh. The learned trial court has rightly observed that since Parduman Singh had already sold his share, prior to the execution of the alleged sale deed dated 9.6.1998, therefore, he was not empowered to execute the alleged sale deed in favour of the appellants-plaintiffs. More so, the entries in the revenue record have not been disputed by the appellants-plaintiffs.

Now the moot question which remains to be gone into is that as to how the said sale deed dated 9.6.1998 Ex.P1 is a result of fraud. I have gone through the judgment dated 29.5.2015 passed by the learned appellate court and find that the issue in question has already been dealt with by it effectively and elaborately in para nos.16 and 17 of its judgment. For the facility of reference, it would be appropriate to reproduce the aforementioned paras of the judgment, which read as follows:-

“16. Now to infer that how the sale deed Ex.P-1 is result of fraud, the said sale deed is dated 9.6.1998. Though that has been reflecting that the possession was delivered to the vendee, but the plaintiffs being vendee of that sale deed have pleaded that they have not got the possession of the suit land under that sale deed Ex.P-1. The said sale deed got executed in their

favour through their father Gurjit Singh. That Gurjit Singh as PW-4 has replied that he had met to the concerned Patwari for sanction of mutation on the basis of said sale deed and who replied that the said Parduman Singh was not holding that much area of the land as he sold vide that sale deed Ex.P1. Then PW-4 has replied that he did not move any application to the concerned authorities for sanction of mutation. Instead, the present suit has been filed on 15.6.2009 regarding that sale deed dated 9.6.1998. Moreover, that was filed after the death of Parduman Singh. Nothing has come on record any such reasons to keep mum by the plaintiffs or their father Gurjit Singh for such a long time since 9.6.1988 to 15.6.2009. It is not believable to keep mum for such a long time for a vendee of a sale deed.

17. Further the sale deed has been found attested by Sh. Malkit Singh Narmbardar. That was attested on 9.6.1998. Ex.DC to Ex. DF are reflecting that said Malkit Singh was not Nambardar in those days, i.e. Since January 1995 to 2011, the said sale deed is dated 9.6.1998. The second attesting witness of the sale deed is Swaran Singh who has not been examined. The passing of sale consideration has been shown in the sale deed passed at the residence of Parduman Singh. These all circumstances are reflecting that the sale deed in question Ex.P1 is not genuine.

In view of the findings recorded by the learned appellate court, this court is of the view that the learned appellate court has rightly

held that the genuineness of the sale deed dated 9.6.1998 Ex.P1 is doubtful on the basis of the evidence produced by the plaintiff-appellants.

There are concurrent finding on the question of fact and law recorded by both the learned courts below and thus, no substantial question of law has been raised in this Regular Second Appeal.

In view of what has been observed above, I do not find any infirmity or illegality in the concurrent findings recorded by both the courts below that may warrant interference by this court. The appeal is, accordingly, dismissed, with no order as to costs.

03.07.2017
VK

(RAMENDRA JAIN)
JUDGE

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| 1. | Whether speaking/reasoned | Yes/No |
| 2. | Whether Reportable: | Yes/No |