

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

125

RSA-154-2017(O&M)

Date of Decision:18.07.2017

Jagtar Singh

.....Appellant

Versus

Dilbagh Singh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

**Present: Mr.Anupam Bhardwaj, Advocate,
for the appellant.**

RAMESHWAR SINGH MALIK, J.(Oral)

Present regular second appeal at the hands of defendant No.2, is directed against the concurrent findings of facts recorded by both the learned courts below, whereby suit of the plaintiffs-respondents for declaration to the effect that they were owner in possession of the suit property on the basis of title derived by them by way of sale-deed, was decreed by the learned trial court, vide its impugned judgment and decree dated 26.09.2014 and first appeal filed by defendant Nos.1 and 2 was also dismissed by the learned Additional District Judge, vide his impugned judgment and decree dated 08.09.2016.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that the present respondents/plaintiffs had filed the suit for declaration to the effect that the plaintiffs were owners of 4/28th share in the land measuring 11 Kls. 2 Mls.

as detailed in the head note of the plaint and were in possession of the land measuring 1 Kanal-12 Marlas and were owners to the extent of 4/21 share in the land measuring 2 Kls.-18 Mls. at village Nizampura and 2 Kls. 17 Mls. in village Fatehpur Rajpura and were in possession in the land measuring 1K-1 Mrls. being their 4/21 share in the abovesaid land situated at village Nizampura, Tehsil and Distt. Amritsar along with consequential relief of permanent injunction restraining the defendants from dispossessing or interfering into the peaceful and lawful possession of the plaintiffs over the land in their possession being their share forcibly, illegally or in any mode whatsoever.

It was alleged by the plaintiffs that Mohinder Singh son of Veer Singh was the father of plaintiff no.1, defendants and grand-father of plaintiffs no.2 to 4. Mohinder Singh was owner in possession to the extent of 1/4th share of land measuring 11Kls.-2 Mrls. and 1/3rd share in the land measuring 2K-18 Mrls, situated at village Nizampura, Tehsil and Distt. Amritsar and he was also owner in possession to the extent of 1/3rd share in the land measuring 2 Kls.-17 Mrls. situated at village Fatehpur Rajpura. Mohinder Singh had since expired on 27.9.2006 leaving behind plaintiff no.1 and defendants as his only sons and Smt.Bheero, Sumitra and Paramjit Kaur alias Goggi as his only daughters being his legal heirs and legal representatives. Rattan Kaur wife of Mohinder Singh was pre-deceased him. After the death of Mohinder Singh, mutation regarding the inheritance of Mohinder Singh was duly sanctioned in favour of his said sons and daughters in equal 1/7th share each vide mutation no.3695. As such, the plaintiff no.1 and defendants became co-sharers/co-owners to the extent of 1/7th share each in the said land out of the share of Mohinder Singh in the

said land and Bheero, Sumitra and Paramjit Kaur alias Goggi upto the extent of 1/7th share each in the said land.

It is further alleged that Bheero, Sumitra and Paramjit Kaur alias Goggi sold their share in the land for valid consideration in favour of plaintiffs no.2 to 4 vide registered sale deeds dated 3.12.2007, 15.12.2008 and 19.8.2008. Mutations in respect to the land in village Nizampura was sanctioned bearing No.3729 and 3730 whereas mutations in respect of land situated at village Fatehpur Rajpura were sanctioned bearing no.3106 and 3123. As such after purchase of said land, the plaintiffs no.2 to 4 become co-sharers in the said land to the extent of 3/21 share in land in which plaintiff no.1 had already 1/21 share as inherited by him from his father Mohinder Singh and they i.e. plaintiffs no.2 to 4 were also become co-sharers to the extent of 3/28 share in the land measuring 11 Kls.-2 Mrls., in which also the plaintiff no.1 had already 1/28th share in the said land as inherited by him from his father Mohinder Singh. Therefore, the plaintiffs became co-sharers and co-owners of the land upto 4/28 share in land measuring 11 Kls.-2 Mrls. and upto 4/21 share in the land mentioned in letters (a) and (b) of heading of the plaint.

It had further been alleged that the defendants were also co-sharers to the extent of 1/21 share each in the land mentioned in letters (a) and (b) and to the extent of 1/28th share each in the land measuring 11 Kls.-2 Mrls. Plaintiffs also submitted that as per the share of the plaintiffs, by way of mutual settlement orally between the plaintiffs and defendants, in lieu of their share in the land mentioned in letters (a) and (b) measuring 5 Kls.-15 Mrls., which comes out to be 1 Kanal-1Mrl., the plaintiffs had been given the land situated at village Nizampura adjoining to the residential house of

the plaintiff no.1 situated in Lal Lakir of Village and in respect of their share in said land, the defendants had been given the land situated at village Fatehpur Rajpura. Further in respect of share of plaintiffs and defendants in the land measuring 11 Kls.-2 Mrls., the plaintiffs had been given the land shown in the site plan and defendants had been given the land shown as vacant in the said site plan and since then, the plaintiffs and defendants were coming in possession of their respective land as per mutual oral settlement and in view of their said settlement, the plaintiffs are coming in possession of their land as shown in red colour in both the site plans with their share and the defendants had no right, title or interest in the same and had been left with no concern with the same.

It had further been alleged that the defendants had now started making jealousy with the plaintiffs regarding the share purchased by them from daughters of Mohinder Singh and they were trying to slip away from the abovesaid mutual oral settlement and demanding more share from the plaintiffs and due to this, they had been harassing and humiliating the plaintiffs by this way or that way. They had been making false complaints with police and also got lodged Kalandra u/s 107/151 Cr.P.C. on wrong allegations against plaintiffs no.1, 4 and Manjit Kaur. In furtherance of their such illegal acts, they demolished one room constructed for cattle etc. in the land measuring 21 Mrls. and also put Turi/Parali lying in the said room for which an FIR was lodged against them at P.S.Jandiala and on 29.12.2008, again tried to cause injuries to the plaintiffs for which FIR was registered against them at P.S.Jandiala. The defendants had been asked several times to desist from their such illegal threats but to no effect. They had no right to take forcible possession and to dispossess the plaintiffs from

the said land.

Having been put to notice, contesting written statement was filed by defendant Nos.1 and 2, whereas defendant No.3 filed his separate written statement. Replication was filed by the plaintiffs. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

- “1. Whether the plaintiffs are entitled to relief of declaration as prayed for?OPP*
- 2. Whether the plaintiffs are entitled to relief of permanent injunction as prayed for?OPP*
- 3. Whether the plaintiffs have not come to the court with clean hands and have suppressed the material facts from the court?OPD*
- 4. Whether the plaintiffs have no locus-standi to file the present suit?OPD*
- 5. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit?OPD*
- 6. Whether the suit of the plaintiffs is bad for non-joinder and mis-joinder of necessary parties?OPD*
- 7. Whether the suit is within limitation?OPD*
- 8. Whether the suit is legally not maintainable?OPD*
- 9. Whether the suit has not been properly valued for the purposes of court fee and jurisdiction?OPD*
- 10. Whether the suit is barred under the provisions of Section 41(h) of the Specific Relief Act?OPD*
- 11. Whether the plaintiffs have no cause of action to file the present suit?OPD*
- 12. Whether the plaint is defective and is not drafted, signed, verified and instituted as per the provisions of CPC?OPD*
- 13. Relief.”*

With a view to substantiate their respective stands taken in their pleadings, both the parties produced on record their documentary as

well as oral evidence. After hearing the 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, their suit for declaration was decreed by the learned trial court, vide its impugned judgment and decree dated 26.09.2014. Feeling aggrieved, defendant Nos.1 and 2 filed their first appeal which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 08.09.2016. Hence, this regular second appeal, at the hands of unsuccessful defendant No.2.

Heard learned counsel for the appellant.

Relationship between the parties is not in dispute. Late Shri Mohinder Singh was owner of the suit property. Plaintiffs filed the suit for declaration claiming themselves to be the owners in possession of the suit land on the basis of three sale deeds executed in their favour by their sisters. On the other hand, pleaded and argued case on behalf of the defendants, including the present appellant, was that there was a family settlement and because of that their sisters have relinquished their shares in favour of all the brothers.

It is also not in dispute that all the three sale deeds executed in favour of the plaintiffs were never challenged by the defendants including the present appellant at any point of time. All the sale deeds were registered documents and were duly proved by the plaintiffs by leading cogent and convincing evidence. On the other hand, defendants including the present appellant failed to prove their pleaded case. Neither any witness to the alleged agreement was produced nor any of the sisters of defendants were produced as witnesses. Having said that, this Court feels no hesitation to

conclude that the learned courts below committed no error of law, while passing the impugned judgments and decrees and the same deserve to be upheld.

Once the appellant never thought it appropriate to challenge the abovesaid three sale-deeds executed in favour of the plaintiffs and he also failed to prove the alleged earlier agreement, he was bound to fail. That is what has been held by both the learned courts below. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at his judicious conclusion, the learned Additional District Judge has rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 19 of its impugned judgment, which deserve to be noticed here, read as under:-

“Therefore, from pleadings of both the parties, the relationship between the parties has not been denied and ownership and succession of the property of Mohinder Singh has also been admitted by both the parties. Therefore, it is admitted that plaintiff no.1, defendants and Bheero, Sumitra and Paramjit @ Gogi were entitled to 1/7th share out of Mohinder Singh's estate. The plaintiffs had alleged that their sisters Bheero, Sumitra and Paramjit @ Gogi had executed sale deeds in favour of plaintiffs no.2 to 4 whereas the defendants had alleged that as per the agreement Ex.D1 Bheero, Sumitra and Paramjit @ Gogi were not entitled to execute sale deeds in favour of the

plaintiffs. They also put reliance on one agreement dated 15.10.2006, therefore, the bone of contention between both the parties is whether the sisters Bheero, Sumitra and Paramjit @ Gogi were competent to execute sale deeds dated 3.12.2007, 15.12.2008 and 19.8.2008. Plaintiffs through witnesses PW1 to PW5 had proved on record the execution of the sale deeds and further certified copies of sale deeds have been proved vide Ex.P1 to Ex.P4. The defendants had failed to rebut the execution of sale deeds by Bheero, Sumitra and Paramjit @ Gogi of their share in favour of plaintiffs no.2 to 4. Now defendants had alleged that there was oral settlement dated 15.10.2006 where it was agreed that property left by Mohinder Singh shall be divided between the plaintiff no.1 and defendants in equal share as sufficient amount has been spent on the marriage of Bheero, Sumitra and Paramjit @ Gogi. Defendant alleged agreement dated 9.8.2007 and thus, Bheero, Sumitra and Paramjit @ Gogi were not competent to execute sale deed in favour of plaintiffs no.2 to 4. The onus to prove this contention was on defendants and in order to prove, they had led their own oral evidence and that (sic.) DW3 and DW4 but both these witnesses alleged that Bheero, Sumitra and Paramjit @ Gogi had relinquished their rights vide agreement dated 8.9.2007 but these witnesses had not seen the agreement dated 8.9.2007 nor they proved the same in their evidence. Further the defendants in their evidence have brought documents Ex.D1 and Ex.DX. Ex.DX is judgment of the appellate court under Order 43 Rule 1 CPC whereas Ex.D1 is alleged to be agreement between the parties dated 8.9.2007 whereas in pleadings, it was mentioned as dated 9.8.2007. It is relevant that only photocopy of this agreement has been brought on record. None of the attesting witnesses have been examined by the defendants to prove this agreement. Even none of the sisters have been examined by the

defendants to prove this agreement. Therefore, defendants had miserably failed to prove on record the agreement dated 8.9.2007 Ex.D1. No evidence of oral settlement dated 15.10.2006 has been brought on record by the defendants to show that the sisters Bheero, Sumitra and Paramjit Kaur alias Gogi were not entitled to execute sale deeds in favour of the plaintiffs whereas the plaintiffs had duly proved on record through certified copies the registered sale deed in their favour executed by Bheero, Sumitra and Paramjit Kaur alias Gogi as discussed above. Therefore, the plaintiffs had duly proved on record that on the basis of sale deeds Ex.P1 to Ex.P4 from Bheero, Sumitra and Paramjit Kaur alias Gogi in favour of plaintiffs no.2 to 4 and inheritance from Mohinder Singh by plaintiff no.1, they are entitled to declaration and therefore, plaintiffs being co-sharers are entitled to injunction restraining the defendants from interfering in their possession and hence, there is no infirmity in the judgment and decree passed by the trial court.”

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 was also unable to refer to 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 judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179.**

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 the present appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

July 18, 2017
seema

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No