

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

Civil Revision No.4924 of 2017.

Decided on:-March 20, 2018.

Nazar Singh.

.....Petitioner.

Versus

Kuldeep Singh and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Arjun Veer Sharma, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner-plaintiff has filed present revision petition under Article 227 of the Constitution of India impugning the order dated 08.09.2015 passed by learned Civil Judge (Junior Division), Ludhiana, whereby the application under Order XXXIX Rules 1 and 2 read with Section 151 CPC filed by the petitioner, was dismissed.

Challenge has also been laid to the judgment dated 19.05.2017 passed by learned Additional District Judge, Ludhiana, whereby the civil miscellaneous appeal filed by the petitioner-plaintiff against the order dated 08.09.2015 passed by the civil Court, was also dismissed.

Briefly stated, the petitioner-plaintiff had filed a suit for declaration that the mutation qua the suit property owned and possessed by Bhag Singh is illegal, null and void and the sale deed dated 07.11.1988 executed by Bhag Singh in favour of Gurmail Singh and Raghubir Singh is

illegal. He sought a decree for permanent injunction restraining the respondent-defendants from alienating the suit property illegally and from dispossessing the petitioner-plaintiff from the suit property. The claim was raised on the ground that Bhag Singh son of Nand Singh was the uncle of the petitioner and was owner in possession of the suit property. He was unmarried and was being looked after by the petitioner. Said Bhag Singh had executed a registered Will dated 06.02.1998 in favour of the petitioner-plaintiff. Therefore, after the death of Bhag Singh, the petitioner-plaintiff had become owner in possession of the suit property. It came to the notice of the plaintiff that Gurmail Singh and Raghubir Singh succeeded in getting the sale deed dated 07.11.1988 executed from Bhag Singh in a fraudulent manner. Bhag Singh had never executed the sale deed dated 07.11.1988.

Along with the plaint, the petitioner-plaintiff had filed an application under Order XXXIX Rules 1 and 2 read with Section 151 CPC mentioning therein that late Bhag Singh had executed a registered, legal and valid Will dated 06.02.1998 in favour of the petitioner-plaintiff. After the death of Bhag Singh, the plaintiff had become owner in possession of the entire suit property. But now, it has been revealed to the plaintiff that the father of the defendants, namely, Gurmail Singh and Raghubir Singh had succeeded in getting one sale deed dated 07.11.1988 in their favour from Bhag Singh, which is false and fabricated. Bhag Singh had never executed the sale deed dated 07.11.1988 in favour of Gurmail Singh and Raghubir Singh. On the basis of the sale deed, the defendants in connivance with each other have got the suit property mutated in their favour in the revenue record and in

order to grab the valuable right of the plaintiff over the suit property, they are trying to take illegal and forcible possession of the suit property.

The respondent-defendants have pleaded that the petitioner-plaintiff is not in possession of the suit property and no particulars of the land have been mentioned in the plaint. After execution of the sale deed dated 07.11.1988 in favour of Gurmail Singh and Raghubir Singh and after their death, the defendants are in possession of the suit property. Even now, the defendants are in cultivating possession of the land in dispute.

The application under Order XXXIX Rules 1 and 2 read with Section 151 CPC filed by the petitioner-plaintiff was dismissed by learned civil Court vide impugned order dated 08.09.2015. Feeling aggrieved, the petitioner filed a civil miscellaneous appeal, but the same was also dismissed by learned lower appellate Court vide impugned judgment dated 19.05.2017.

Still aggrieved, the petitioner-plaintiff has filed the present civil revision petition.

Learned counsel for the petitioner-plaintiff has argued that the approach of learned Courts below while dismissing the application under Order XXXIX Rules 1 and 2 read with Section 151 CPC filed by the petitioner is contrary to law, facts and circumstances of the case. The Courts below have failed to consider the fact that the petitioner is in actual physical cultivating possession of the suit property, as shown in the Jamabandi. He has argued that the findings given by learned Courts below are not sustainable in the eyes of law and are liable to be set aside.

I have heard learned counsel for the petitioner-plaintiff.

The petitioner-plaintiff has claimed himself to be exclusive owner in possession of the suit property on the basis of Will dated 06.02.1998 and has challenged the sale deed dated 07.11.1988. The suit had been filed by the plaintiff in the year 2014, whereas the sale deed in question was executed in the year 1988. Thus, the suit had been filed after about more than 26 years of the execution of the sale deed. There is no averment in the application under Order XXXIX Rules 1 and 2 read with Section 151 CPC with regard to date and time, when the plaintiff came in the knowledge of the sale deed dated 07.11.1988 executed in favour of Gurmail Singh and Raghubir Singh.

It is a settled law that a registered document is a public document. Admittedly, the sale deed dated 07.11.1988 is a registered document and pursuant thereto, the mutation was sanctioned in favour of the respondent-defendants. Therefore, once the sale deed dated 07.11.1988 is a public document, it is deemed to have been in the knowledge of the petitioner-plaintiff.

When Bhag Singh (since deceased) had already sold the suit property to Gurmail Singh father of respondent-defendants No.1 to 5 and Raghubir Singh husband of respondent-defendant No.6 vide registered sale deed dated 07.11.1988, the execution and registration of Will dated 06.02.1998 in favour of the petitioner-plaintiff i.e. after more than 9 years has lost its sanctity. The benefit of such Will could be taken only in case deceased Bhag Singh had left behind any other property, which could have been inherited by the petitioner-plaintiff.

Moreover, Bhag Singh had died on 04.05.1998 and during his life-time, he had never challenged the sale deed dated 07.11.1988. Thus, this Court finds that the plea of petitioner-plaintiff is lacking the basic ingredients for grant of temporary injunction i.e. prima facie case, balance of convenience and irreparable loss. Therefore, this Court does not find any illegality or irregularity in the findings given by learned Courts below.

Accordingly, the impugned order dated 08.09.2015 passed by learned Civil Judge (Junior Division), Ludhiana and the impugned judgment dated 19.05.2017 passed by learned Additional District Judge, Ludhiana are affirmed and the present civil revision, being devoid of any merit, is dismissed.

It is made clear that the observations made hereinabove shall not be construed to be an expression on the merits of the suit and the same are confined only qua the application under Order XXXIX Rules 1 and 2 read with Section 151 CPC.

March 20, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No