

RSA No.1733 of 1988 (O&M)

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

RSA No.1733 of 1988 (O&M)

Date of decision:14.12.2018

Angrej Singh

... Appellant

Vs.

Balwant Singh and others

... Respondents

RSA No.2106 of 1995 (O&M)

Lachhman Singh and another

... Appellants

Vs.

Angrej Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vikas Singh, Advocate
for the appellant (in RSA No.1733 of 1988)
for the respondent (in RSA No.2106 of 1995).

Mr. Amit Jain, Advocate
for the appellants (in RSA No.2106 of 1995)
for the respondents (in RSA No.1733 of 1988).

AMIT RAWAL J.

This order of mine shall dispose of two Regular Second Appeals bearing Nos.1733 of 1988 and 2106 of 1995.

RSA No.1733 of 1988, at the instance of Angrej Singh, has arisen out of decision of civil suit no.331 of 1983 titled as Lachhman Singh and another vs. Piara Singh and another” (hereinafter referred to as “first suit”) seeking possession by way of specific performance and permanent injunction which was decreed by the Appellate Court in toto, as the trial Court had confined it to the alternative relief.

RSA No.2106 of 1995 at the instance of Lachhman Singh and another has arisen out of decision of civil suit no.295 of 1989 titled as Angrej Singh vs. Lachhman Singh and another, (hereinafter referred to as “second suit”) seeking declaration and permanent injunction.

Since the common question of facts and law are involved, therefore, both appeals are decided together.

The facts which revealed from first suit are that plaintiff instituted the suit for possession by way of specific performance of the agreement to sell dated 3.4.1982 executed by Piara Singh in his favour in respect of land measuring 15 kanals 7 marlas described in the plaint. It was alleged that defendant no.1- Piara Singh, Atto and Nihalo daughters of Prem Singh were owners in possession of the agricultural land measuring 69 kanals 7 marlas. They were also in possession of land measuring 77 kanals 7 marlas having 69/7th share. Atto and Nihalo sold their share of agricultural land measuring 34 kanals 13 marlas in favour of Sukh-Chain Singh, Hardev Singh, Gurmej Singh, Kulwinder Singh and Massa Singh. Piara Singh sold 19 kanals 7 marlas of agricultural land out of the said joint khata, of specific killa numbers in favour of Lachhman Singh and Balwant Singh, vide two sale deeds dated 20.02.1980 and since then, the plaintiffs had been in exclusive possession. Piara Singh was in exclusive possession of agricultural land out of joint khata measuring 20 kanals 10 marlas comprising of mustatil no.11 kill no.25/2(6-10), mustatil no.12, kill no.21 (8-0), mustail no.14, killa no.1/2(5-0) and killa no.2(1-0) which was leased out to one Jiwan Singh. Out of the aforementioned land, the plaintiffs

purchased the land measuring 1 kanal, mustail no.14, killa no.2, so Jiwan Singh was lessee of only 19 kanals 10 marlas under Piara Singh according to his share of land 15 kanals 7 marlas. He agreed to sell the aforementioned land to the plaintiffs, vide agreement, ibid, in lieu of Rs.21,500/- but did not execute the sale deed. He acquired the knowledge that Piara Singh during the subsistence of the agreement to sell, vide sale deed dated 02.09.1983 has sold the land in favour of Angrej Singh, appellant/defendant no.2 for a sum of Rs.15,000/- which was in the knowledge of Angrej Singh. Piara Singh in written statement admitted the status of co-sharer in the suit land as well as possession. The factum of lease to Jiwan Singh and the execution of the agreement to sell in favour of plaintiffs was admitted but stated that defendant no.2-Angrej Singh got executed from him a fictitious sale deed and told him that he had already executed an agreement in respect of the said land in favour of the plaintiffs.

Defendant no.2 filed a separate written statement and claimed himself to be a bonafide purchaser with consideration and without notice and also claimed himself as co-sharer of the suit land. It was further revealed that he filed an application for correction of khasra girdawari as the plaintiffs managed to get the same in their favour in collusion with halqa patwari and Jiwan Singh also joined hands with the plaintiffs. The agreement was stated to be ante dated, vague and sham transaction.

Since the parties were at variance, the trial Court framed the following issues in first suit:-

1. Whether defendant Angrej Singh is a bonafide purchaser

with consideration and without notice?OPD

2. Whether the suit has been filed in collusion of defendant no.1 as alleged?OPD

3. Whether defendant Piara Singh entered into an agreement to sell the suit land on 3.4.1982 in favour of the plaintiffs?OPP

4. Whether the plaintiffs have always been ready and willing to perform their part of the agreement?OPP

5. Whether the plaintiff is entitled to the specific performance of the agreement?OPP

6. If issue no.5 is not proved, to what alternative relief, the plaintiffs are entitled?OPP

7. Whether the plaintiff is entitled to the injunction prayer for?OPP

8. Relief.”

RSA No.2106 of 1995

Angrej Singh in second suit sought the injunction against Lachhman Singh, and Balwant Singh, plaintiffs in first suit in respect of khasra no.11//25/6-10, 12//21/8-0, 14//1/2-5-0 measuring 19 kanals 10 marlas situated in village Lakhwarian, Tehsil Sultanpur Lodhi on the premise that he had been in possession of the suit property on the basis of the sale deed 02.09.1983 and there was litigation with regard to khasra girdawari and order of the revenue Court, correcting the khasra girdawari, was without jurisdiction.

Lachhman Singh, plaintiff in first suit and defendant in second suit opposed the suit and taken the same plea as in the suit for specific performance but further clarified that he had taken the possession of the suit property from the receiver owing to the pendency of the proceedings under Sections 145 and 146 Cr.P.C, in respect of khasra no.11//25/2(6-10), 12//21 (8-0), whereas, other khasra numbers remained with the defendants.

Since the parties were at variance, the trial Court framed the following issues in second suit:-

- “1. Whether the suit is bad for multiplicity of causes of action, if so its effect?OPD
2. Whether the suit is vague and not within times. If so its effect?OPD
3. Whether the suit is not maintainable in the present form?OPD
4. Whether the plaintiff is entitled to the declaration and injunction as prayed for?OPP
5. Relief.”

The plaintiffs in first suit examined 14 (fourteen) witnesses and brought on record revenue record/other documents i.e. Ex.P1 to Ex.P12, Ex.PA, Ex.PB, Ex.PC, Ex.PD, Ex.PE, Ex.PX , Ex.PZ and Ex.Z1 etc.

On the other hand, defendants examined five witnesses and brought on record Ex.D1 to Ex.D4 and various other documents.

By holding Angrej Singh, appellant to be bonafide purchaser confined the decree to alternative relief in first suit. The trial Court

dismissed the second suit. The appeal taken by Lachhman Singh, plaintiff in first suit was allowed, whereas, by Angrej Singh in second suit was also allowed as such two appeals have been filed before this Court.

Mr. Vikas Singh, Advocate for the appellant (in RSA No.1733 of 1988) and for the respondent (in RSA No.2106 of 1995) submitted that judgment and decree of the Lower Appellate Court is not only erroneous but perverse as the appellant is vendee for a consideration of Rs.15,000/- and the sale deed dated 02.09.1983, indeed was executed. Since the dispute qua possession arose, the proceedings under Section 145 Cr.P.C were initiated, receiver was appointed. The aforementioned proceedings were decided in favour of the appellant and possession was restored on 10.06.1987. Khasra girdwari for the Rabi 1988 was recorded in favour of the appellant and in view of such situation, there was no requirement of law to make reasonable inquiry. The entire reasoning of the Lower Appellate Court is based upon the surmises and conjectures and treated Jiwan Singh to be in possession of the land and from whom the plaintiffs had taken the possession by paying him a compensation. The trial Court disbelieved the story but no reasons have been assigned. In case, the plaintiffs had actually obtained the possession from Jiwan Singh, appellant could not be in possession of the land as for all intends and purposes, the order of the Sub-Divisional Magistrate in the proceedings under Section 145 Cr.P.C was conclusive. The agreement Ex.PW7/A propounded by the respondent-plaintiff was vague and fictitious and the trial Court rightly discarded the same. The original agreement had not seen the light of day. Khasra girdawari for the

year 1984 was wrongly recorded and for that application for correction was filed which was corrected as per the order dated 09.05.1988, therefore, judgment and decree of the Lower Appellate Court arising out of second suit, is perfectly legal and justified.

Per contra, Amit Jain, learned counsel appearing on behalf of the respondents (in RSA No.1733 of 1988) and for the appellants (in RSA No.2106 of 1995) submitted that entries regarding delivery of possession was made in the revenue record and khasra girdawari Ex.PW9/A and Ex.PW10/A established the possession of Lachhman Singh. The entire genesis of the judgment of the trial Court had been on the basis of pendency of regular second appeal preferred by Angrej Singh, which was on wrong premise as interim order was passed. It was not the case of Angrej Singh before the Circle Revenue Officer, nor he disputed the possession of Jiwan Singh. In fact, Piara Singh was not in self-cultivating possession. He supported the judgment of the Lower Appellate Court rendered in first suit being the last Court of fact and law as on examination of statement of Gian Singh Patwari, PW10, it came on record that khasra girdawaris were in the names of Lachhman Singh and Balwant Singh and thus, urged this Court for dismissal of the appeal bearing no.1733 of 1998 and allowing of appeal no.2106 of 1995.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below and of the view that RSA No.1733 of 1988 of appellant-Angrej Singh is to be dismissed and that of Lachhman Singh bearing RSA No.2106 of 1995 is to

be allowed. The reason is not only one but many.

Admitted, Piara Singh, vendor was living in Ferozepur District and the land was in possession of one Jiwan Singh. Jiwan Singh while appearing in the witness box as PW3, testified that he relinquished the possession in favour of Lachhman Singh on receipt Ex.P1/A of Rs.13,500/- of even date 03.04.1982 when the agreement was signed. The aforementioned receipt was also attested by Mohan Singh and Karnail Singh. Halqa Patwari, PW9 stated that according to entry no.50 of the roznamcha dated 07.10.1982 cultivation of the land comprising in khasra no.11//25/2, 12//21, 14//1/2 was changed from Jiwan Singh to the name of Balwant Singh, Lachhman Singh. The aforementioned entry is Ex.PW9/A. Angrej Singh has failed to prove on record any collusion between Piara Singh and Lachhman Singh. In view of such evidence, the alleged reasonable inquiry purported to have been made during the subsistence of the agreement to sell cannot accord him a status of bonafide purchaser. Even at the time of execution of the agreement to sell dated 03.04.1982, Lachhman Singh and Balwant Singh were in possession of suit land. From perusal of the copy of the suit, Ex.DW5/2 by Atto, Nihalo against Piara Singh, Lachhman Singh and Balwant Singh, Piara Singh was restrained from alienating the suit land to any other person. It ex facie proved on record that Mukhtiar Singh was admittedly in close relationship with Angrej Singh being his father's sister's husband (fufad), therefore, Angrej Singh cannot coined a story of bonafide purchaser or no knowledge of the previous agreement. The suit filed by Mukhtiar Singh was decided on

19.12.1983 , whereas, sale deed in favour of Angrej Singh was executed on 2.9.1983 which was during the pendency of the suit. The appellant has failed to prove receipt of compensation by Jiwan Singh as despite cross examination, nothing contrary surfaced as he stuck to the stand having received the compensation from Lachhman Singh. Concededly, the suit property was subjected to the proceedings under Section 145 Cr.P.C. On decision, tenant handed over the possession to plaintiff in first suit.

The argument of Mr.Vikas Singh, with regard to non-production of original agreement is not sustainable as it has also been proved through the testimony of constable PW11-Sant Ram, who produced on record a copy of daily diary dated 15.09.1984, Ex.PW5/1, which reflected that Lachhman Singh-appellant/plaintiff had given an affidavit regarding loss of original agreement. On perusal of the aforementioned daily diary register, it is revealed that Lachhman Singh had given an affidavit regarding the loss of original agreement which was part of the proceedings under Section 145 Cr.P.C. Amar Nath, DW4, Reader of SDM, Kapurthala testified that Ex.D1 and Ex.D2, copies of the statements of Lachhman Singh and Mohan Singh were recorded during the course of proceedings under Section 145 Cr.P.C.

The argument that agreement to sell is ante dated, is also meritless, for, entry bearing no.1176 regarding the purchase of stamp paper from one Satpal Singh, stamp vendor, has been proved on record. The stamp paper was worth Rs.2.25 paisa and purchased by Piara Singh. The trial Court did not notice the aforementioned piece of evidence. Even the

execution of the agreement by Piara Singh in favour of Lachhman Singh for a sum of Rs.21,500/- had been proved from the entry no.138, Ex.P1 which was signed by Piara Singh and attested by Mohan Singh and Bawa Singh. Deed Writer, Parshotam Lal testified on oath regarding the scribe of the agreement to sell and witnesses. He also endorsed that marginal witnesses had also thumb marked and signed the entry bearing no.138 in his register, Ex.P1. Mohan Singh and Bawa Singh appeared as PW7 and PW8. They have corroborated the statements of the plaintiff as well as averments in the plaint with regard to the execution of the agreement to sell for a consideration referred to therein and earnest money of Rs.1500/-.

The Lower Appellate Court being the last Court of facts and law have examined all the aforementioned facts which remained un-noticed by the trial Court, therefore, cannot be faulted with.

The appeal bearing No.1733 of 1988 is dismissed

RSA No.2106 of 1995

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The

Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)] cannot be sustained and is thus overruled.” [at paras 27 - 29]”

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India

came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

As a necessary coronary, the appeal filed by Lachhman Singh bearing No.2106 of 1995 is hereby allowed.

(AMIT RAWAL)
JUDGE

December 14, 2018

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No