

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

RSA No.2760 of 1988

Date of Decision.27.07.2018

Sohan Lal (D) through LRs

.....Appellant

Vs

Rajender Singh and others

.....Respondents

2. RSA No.2761 of 1988

Sohan Lal (D) through LRs

.....Appellant

Vs

Rajender Singh and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjay Mittal, Advocate
for the appellant.

Mr. P.S. Bhangu, Advocate
for respondent No.1.

Mr. S.S. Behl, Advocate.

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of two regular second appeals bearing No.2760 and 2761 of 1988 titled as “Sohan Lal (D) through LRs Vs. Rajender Singh and others” arising out of adjudication of Civil Suit Nos.1108 and 1109 of 1982 titled as “Rajinder Singh Vs. Sohan Lal and another” wherein the suits for declaration and injunction preferred by Rajinder Singh were decreed by the trial Court and upheld by the lower Appellate Court. The facts are being taken from RSA No.2760 of 1988.

Rajinder Singh instituted the suit on the premise that Om

Prakash son of Kheta Singh, who was owner of the suit property, orally exchanged the land with Maman Singh and Arjun Singh. In that regard, two mutations were effected in the year 1981 i.e. 05.12.1981 and the suit land was handed over to Maman Singh and Arjun Singh, thus, for all intents and purposes Om Parkash, defendant No.2 was not left with any right or title in the aforementioned property. Vide sale deeds dated 26.10.1982 and 02.08.1982, Rajinder Singh purchased the property from Maman Singh and Arjun Singh. Thereafter, Om Parkash colluded with Sohan Lal and suffered a statement before the Revenue Court with regard to khasra girdawari and as a result thereof, the khasra girdawari was reflected in the name of Sohan Lal.

The aforementioned order was challenged before the competent authority and therefore, the aforementioned suit was filed. Even the mutation in respect of the sale deeds aforementioned was also sanctioned in favour of Rajinder Singh. It is in that background, declaration and injunction was sought.

Defendant No.1 contested the suit by raising preliminary objection and stated that he had been in possession of the suit property as tenant by virtue of registered sale deed dated 25.05.1978 executed by Om Parkash in his favour and the exchange of land by Om Parkash with Maman Singh and Arjun Singh was a sham transaction.

Since the parties were at variance, the trial Court framed as many as six issues and the parties led evidence in support of their pleadings.

On the basis of the evidence brought on record, particularly, Ex.D1, Jamabandi for the year 1977-78 wherein Om Parkash had been recorded to be owner of the suit property and in the subsequent jamabandi for the year 1982-83, Ex.D4, Maman Singh and Arjun Singh, the trial Court decreed the suit. The appeal preferred before the lower Appellate Court was dismissed. In these circumstances, regular second appeals have been filed.

This Court vide order dated 30.11.1988 while admitting the aforementioned regular second appeal, stayed the dispossession in the meanwhile.

Mr. Sanjay Mittal, learned counsel appearing on behalf of the appellant in support of the memorandum of appeal raised the following submissions:-

- (i) Both the Courts below have erroneously decreed the suit despite the fact that khasra girdawari from the year 1982 till date had been in favour of Sohan Lal. It is Sohan Lal, who had been in possession of the property and therefore, injunction could not have been granted. Exchange of land by Om Parkash with Maman Singh and Arjun Singh was a sham transaction. Before the lower Appellate Court, an application for additional evidence was submitted to place on record the judgment dated 4.8.1987 rendered in Civil Suit No.54 of 1982 titled as "*Om Parkash Vs. Maman Singh and Rajinder Singh*" wherein there was a finding that there was no oral exchange but the

same has not been looked into and therefore, this an abdication.

(ii) The plaintiff did not appear nor he produced the predecessor Arjun Singh & Maman Singh as witness to prove the oral exchange. No evidence has been proved on record to establish that in pursuance of oral exchange, the possession was handed over to Maman Singh and Arjun Singh, therefore, judgments and decrees of the Courts below are liable to be set aside.

Mr. Bhangu, learned counsel appearing on behalf of respondent No.1, Rajender Singh submitted that concurrent finding of fact and law cannot be interfered with as the same are based upon oral and documentary evidence. Sohan Lal, appellant-defendant No.1, had not been able to prove on record lease deed dated 25.05.1978 as it was only marked as Mark DA. Sale deed was unregistered and created to thwart the rights of Maman Singh and Arjun Singh. In fact, it was an apparent collusion between Om Parkash and Sohan Lal to wriggle out from the exchange but the fact of the matter is that the registered documents i.e. sale deeds carry presumption of truth and had not been challenged by setting up counter claim nor the oral exchange was challenged, thus, urges this Court for upholding the findings under challenge.

I have heard learned counsel for the parties, appraised the paper book, records of the Courts below and of the view that there is no force and merit in the submissions of Mr. Mittal, for, the appellant-defendant No.1, Sohan Lal, has not been able to prove the

lease deed dated 25.05.1978. It was a document more than five years old and therefore, required registration as per Section 17 of the Registration Act. The khasra girdawaries in favour of Sohan Lal was effected on account of statement suffered by Om Parkash. The exchange of land of Om Parkash had taken place with Maman Singh and Arjun Singh and mutations were also sanctioned in their favour.

There is another aspect of the matter. Om Parkash did not have any right or title in the property by virtue of two sale deeds referred to above and the registered documents have not been challenged either by Om Parkash or Sohan Lal. Mutation/khasra girdawaries did not confer any title. Registered document has to be challenged within a period of three years that is too through a competent court below. Therefore, in my view, as per para No.23 of the ratio decidendi culled out by Hon'ble Supreme Court in **Satya Pal Anand Vs. State of M.P. And others 2016(4) RCR (Civil) 904**, Sohan Lal cannot be permitted to challenge exchange deed or the sale deeds in the absence of any counter-claim and till date, there is no challenge to the registered documents. The relevant paragraph of the judgment in **Satya Pal Anand** (supra) reads as under:-

“23. If the document is required to be compulsorily registered, but while doing so some irregularity creeps in, that, by itself, cannot result in a fraudulent action of the State Authority. Non-presence of the other party to the Extinguishment Deed presented by the Society before the Registering Officer by no standard can be said to

be a fraudulent action per se. The fact whether that was done deceitly to cause loss and harm to the other party to the Deed, is a question of fact which must be pleaded and proved by the party making such allegation. That fact cannot be presumed. Suffice it to observe that since the provisions in the Act of 1908 enables the Registering Officer to register the documents presented for registration by one party and execution thereof to be admitted or denied by the other party thereafter, it is unfathomable as to how the registration of the document by following procedure specified in the Act of 1908 can be said to be fraudulent. As aforementioned, some irregularity in the procedure committed during the registration process would not lead to a fraudulent execution and registration of the document, but a case of mere irregularity. In either case, the party aggrieved by such registration of document is free to challenge its validity before the Civil Court.

In my view, both the Courts below have earnestly decreed the suit seeking declaration and injunction, for, the lease deed had not been reflected in any of the revenue record except in the year 1982 when Om Parkash suffered a statement and that is too at the back of the beneficiaries Maman Singh and Arjun Singh.

The argument of Mr. Mittal has not been able to cut ice

to enable this Court to form a different opinion than the one arrived at by the Courts below. I do not find any illegality and perversity, much less, any substantial question of law for determination by this Court.

The judgments and decrees passed by the Courts below are upheld and the appeals are dismissed.

Interim order granted by this Court is ordered to be vacated.

(AMIT RAWAL)
JUDGE

July 27, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No