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

**RSA No. 2754 of 2004 (O&M)
Decided on: 23.03.2018**

Hans Raj (deceased) through LRs and others**.....Appellants**

versus

Raj Kumar and others**.....Respondents****Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT****Present:** Mr. R.K.Gupta, Advocate,
for the appellants.

Mr.Adarsh Jain, Advocate
for respondents No. 1 to 3.

Rajbir Sehrawat, J.(Oral)

1. This is an appeal filed by plaintiffs against the judgment and decree of reversal; whereby the judgment and decree of the Trial Court, decreeing the suit filed by the appellants has been partly reversed by the lower Appellate Court.

2. For convenience, the parties would be referred herein as the plaintiffs and the defendants; as they were described in the original suit.

3. The brief facts of this case are that the plaintiffs filed a suit claiming that one Darshan Singh son of Gurbax Singh was the owner of the land measuring 32 Bighas 13 Biswas; including the suit land. The plaintiffs have been in peaceful possession of the suit land for more than 40 years as a tenant under the original owner Darshan Singh. However, the defendants have got sanctioned a mutation No. 901 dated 26.04.1995 qua the suit land; in collusion with each other. The mutation is totally wrong and illegal. It is further claimed that the said mutation is in the name of one Gurinder Singh. Gurinder Singh is not the legal representative of Darshan

Singh. The defendants, in collusion, have got prepared a fictitious mutation and further a sale deed dated 21.11.1995, on the basis of some factitious and alleged power of attorney granted by Gurinder Singh, regarding the land measuring 16 Bighas 6 Biswas, out of the suit land. Therefore, the declaration was sought that the sale deed in question be declared as null and void. Still further, the plaintiffs have claimed that they have been in possession on the suit property as tenant. Since the defendants are not having any title over the suit property, therefore, they be permanently restrained from interfering in peaceful possession of the defendants.

4. On being put to notice, all the defendants filed a joint written statement, taking routine preliminary objections. On merit, it was claimed that previously one Hari Chand son of Gulzar Mal of Village Kuranwala, Tehsil Rajpura, father of defendant No. 4; was in cultivating possession of the suit land and his son, Subhash Chand, has sold the land in favour of defendants No. 1 to 3 vide registered sale deed dated 16.11.1995, as general attorney of Gurinder Singh, in whose favour above said mutation was entered. It was further pleaded that the remaining land has also been sold by Vipin Kumar son of Ram Chander and Suresh Kumar son of Shiv Narain vide registered sale deed dated 21.11.1995 in favour of defendant No. 3, again as general attorney of the above said Gurinder Singh. It was also averred that the possession of the suit land was also delivered to the purchaser at the time of execution of the sale deed. Defendants No. 1 to 3 have purchased the land through registered sale deed; which have been rightly executed in their favour by a duly authorised persons. The plaintiffs are not in possession of the suit land, therefore, there is no question of dispossession or interfering in their possession.

5. As per the pleadings of the parties, the following issues were framed by the Trial Court:-

1. *"Whether the sale deed dated 21.11.1995 executed by defendant No. 4 in favour of defendants No. 1 to 3 are illegal , null and*

void?OPP

2. *Whether the plaintiffs are entitled to injunction as prayed for?OPP*

3. *Whether the plaintiffs are entitled to declaration as prayed for?OPP*

4. *Whether the suit of the plaintiff is not maintainable?OPD*

4A. *Whether the suit is properly valued for purpose of court fee and jurisdiction?OPD*

4B. *Whether Gurinder Singh is the legal heir of Darshan Singh son of Shri Gurbax Singh, if so its effect?OPD*

4C. *Whether Bipan Kumar son fo Ram Chand and Suresh Kumar son of Shri Shiv Narain were lawful attornies of Gurinder Singh and they were competent to execute the sale deed dated 21.11.1995 in favour of defendants No. 1 to 3?OPD*

5. *Relief?"*

6. Parties led their respective evidence to support their case.

7. Having heard the learned counsel for the parties and appreciated the evidence on record, the Trial Court decreed the suit holding that the plaintiffs are in possession of the suit land as tenant. The Trial Court also held that the sale deed under challenge, in favour of defendants No. 1 to 3; is illegal, null and void. While decreeing the suit, the Trial Court recorded a finding that it has come in evidence that there is no person in the name of Gurinder Singh. The said Gurinder Singh is not even mentioned to be present at the time of sanction of mutation in his favour. Rather some other person is stated to be present before the authorities at that time on his behalf. Even the mutation in favour of the Gurinder Singh mentions one Surinder Singh as legal representative of Darshan Singh. The Trial Court further held that at the time of sanction of the impugned mutation one Rachni Devi and Khareti Lal are said to be present to testify regarding the veracity of the inheritance. However, Rachni Devi has not been examined as witness in this case. Khareti Lal has been examined as PW-6 and he has denied having testified anything in connection with the said mutation. He has further stated that there is no person named Gurinder

Singh, as son or legal representative of Darshan Singh. The Trial Court further

recorded that even PW-1, Sarban has deposed before the Court that there is no such person in the Village. He has further deposed that Gurinder Singh claimed to be legal representative of Darshan Singh; is fictitious person. The Trial Court further relied upon the fact that the general power of attorney, claimed to be in favour of Subhash Chand, Suresh Kumar, Bipan Kumar and Dalip Kumar, does not even mention the address of the granter of power of attorney Gurinder Singh. Putting the final nail in the case of defendants, the Trial Court recorded the finding that DW-2, the witness of the defendants itself, have demolished the case of defendants entirely, when he deposes that Darshan Singh was still alive in the year 1990 and that he had seen Darshan Singh about three years back. The impugned mutation mentions the date of death of Darshan Singh to be 07.05.1974 whereas the witness examined by the defendants says that Darshan Singh was still alive. Hence, the case of the defendants is falsified by the evidence of the defendants themselves. The Trial Court further held that although defendant no. 4 claimed to be general power of attorney of Gurinder Singh, however, even defendant No. 4 has not stepped into the witness box. Neither any details regarding the said Gurinder Singh have come in evidence from either of the defendants, in terms of his particulars or his address. Further the Trial Court held that the sale deed in favour of defendants No. 1 to 3 has otherwise also not been proved. No consideration is claimed to have exchanged hands before the Sub-Registrar. None of the attesting witnesses of the sale deed has been examined by the defendants. The Trial Court has also held that possession of the plaintiffs is proved by the PWs, examined by them; as well as by the entries of the revenue records. They have been shown in continuous possession. Accordingly, the Trial Court passed decree, declaring the sale deed and the mutation as null and void and granting injunction in favour of the plaintiffs; restraining the defendants from interfering in their possession. Aggrieved against the judgment and decree passed by

8. The lower Appellate Court partly reversed the judgment and decree passed by the Trial Court. The lower Appellate Court held that the possession of the plaintiffs has been proved as per the record. Therefore, the injunction was granted in their favour; restraining the defendants from interfering in to the possession of the plaintiffs except in due course of law. So far as the declaration qua the validity of the sale deed and the mutation is concerned, the lower Appellate Court held that the sale deed has been executed on the basis of power of attorney granted by Gurinder Singh, in whose favour the mutation is already existing. However, Gurinder Singh has not been impleaded as a party in the proceedings. In absence of Gurinder Singh, no findings can be recorded against him. Therefore, no declaration can be granted qua the invalidity of the sale deed or invalidity of the mutation in question. The lower Appellate Court, however, held that *jamabandi* for the year 1990-91 shows Darshan Singh to be the owner, therefore, without impleading Gurinder Singh who claimed to be the son of Darshan Singh, no finding regarding title to the suit land could have been recorded by the Trial Court. The lower Appellate Court further held that the title of the defendants; who happened to be purchasers; cannot be questioned by anybody other than the legal representative of the deceased Darshan Singh. The lower Appellate Court also recorded that not only Gurinder Singh; even the holder of the power of attorney of Gurinder Singh has not been impleaded as party. Accordingly the lower Appellate Court, though granted injunction, yet denied the declaration to the plaintiffs qua the invalidity of the sale deed in favour of the defendants. Aggrieved against the judgment and decree, the present appeal has been preferred by the plaintiffs. No appeal or cross-objections have been filed by the defendants before this Court questioning the finding regarding the possession of the plaintiffs.

9. To support his case, learned counsel for the appellants has submitted

that since the plaintiffs are, admittedly, in possession of the suit property and

recorded as tenant under original owner Darshan Singh, therefore, they have every right to question the claimed title of anybody who is to threaten their possessory rights by any illegal means. Hence, they have rightly filed a suit in question. Regarding the non-impleading of Gurinder Singh as party, learned counsel submits that no objection was taken by the defendants in the written statement that Gurinder Singh was necessary party in this suit. However, the plaintiffs have duly averred that any Gurinder Singh is not the legal representative of the original owner Darshan Singh. Once there is no legal representative of Darshan Singh in the name of Gurinder Singh, they were not required to implead any Gurinder Singh as party to the proceedings. Learned counsel further relied upon the findings recorded by the Trial Court that the person in the name of Gurinder Singh is a fictitious person. He has not shown his face at any stage of any proceedings relating to this property. Learned counsel further submits that the alleged witness of mutation has also denied being witness to any such proceedings of mutation and he has also deposed that there is no legal representative of Darshan Singh in the name of Gurinder Singh. Learned counsel also relied upon the testimony of other witnesses to contend that, in fact, there is nothing on record to show that any person in the name of Gurinder Singh ever existed; as legal representative of the original owner Darshan Singh. Therefore, it is contended by the learned counsel for the appellants/plaintiffs that the findings by the lower Appellate Court are perverse and liable to be set aside.

10. While countering the argument raised by the learned counsel for the appellants/plaintiffs, learned counsel for the respondents/defendants has argued that the plaintiffs have not categorically pleaded in the plaint that there does not exist any person in the name of Gurinder Singh. They have not pleaded that general power of attorney is fabricated or that person in the name of Gurinder Singh is a fictitious person. Learned counsel further submits that since Gurinder Singh have not been

lower Appellate Court; for non-joinder of the parties. It is submitted by the learned counsel for the respondents that, at least, the plaintiffs should have impleaded Gurinder Singh as a party in the suit and if the service report would have come saying that there is no Gurinder Singh son of Darshan Singh; only then the Court would have been right in assuming that there does not exist any person in the name of Gurinder Singh; as legal representative of Darshan Singh. Learned counsel further submits that the present suit is not a title suit. Since the plaintiffs are not claiming their title; and the defendants, through the registered sale deed, have got a better and legal title, therefore, the plaintiffs could not have challenged the status of the defendants/respondents as the owner of the suit land. Learned counsel further submits that since the plaintiffs are only tenants, therefore, they are estopped from questioning of the title of the owner of the property. To support his contention learned counsel for the respondents have relied upon to judgments of Hon'ble Supreme Court rendered in **2015 (1) RCR (Rent) 544** titled as **Dr. Ambica Prasad Versus Md. Alam and another** and another judgment reported as **2017 (2) SCC 274** titled as **Bismillah Be (Dead) by legal representatives Versus Majeed Shah**.

11. Having heard the learned counsel for the parties and perused the record with their able assistance, this Court is of the considered opinion that the argument raised by the learned counsel for the appellants deserve to be sustained. Admittedly, the plaintiffs are recorded as a tenant as per the revenue records and they are shown to be in possession over the suit property for a long time. Even the lower Appellate Court has recorded the finding regarding their possession and have decreed their suit to that limited extent. This finding has not even been challenged by the defendants. Therefore, the possession or status of the plaintiffs cannot be disturbed or sought to be disturbed by anybody else except the original owner or lawful successor of the original owner. If any person creates any document of purported

plaintiffs as lawful tenant over the suit land, then they have every right to question the validity of such a document, of course, subject to the same being strictly proved by them to be wrong/illegal, in accordance with the law. Hence, in the present case, it cannot be said that the plaintiffs did not have *locus standi* to file the suit; as such. So far as, the reliance of the learned counsel for the respondents upon the judgment of the Hon'ble Supreme Court is concerned, none of the judgments relied upon by him enhances the case of respondents. Both the judgments are distinguishable on the facts of the particular cases. Rather the judgment in case of ***Bismillah's case (supra)*** supports of the case of the present plaintiffs. So far as the judgment of the Hon'ble Supreme Court in ***Dr. Ambica Prasad's case (supra)*** is concerned, that is only the precedent on the point that the 'landlord' would include original owner and his vendee as well, irrespective of the fact whether any other person is in receipt of the rent from the tenant. Therefore, this judgment, at the best, is an authority on the point that even if the tenancy is granted to a tenant by a person other than the original owner still the original owner would also be the 'landlord' qua those tenants irrespective of any attornment by the tenants. In case of transfer of land by the original owner, the transferee shall become 'landlord' for the tenant, subject to the proof of the transfer of title. So far as the judgment of the Hon'ble Supreme Court, in ***Bismillah's case (supra)*** is concerned, the Hon'ble Supreme Court has categorically held as under:-

“24. Law relating to derivative title of the landlord (Lessor) and challenge, if made, to such title by the tenant (Lessee) during subsistence of tenancy in relation to demised property is fairly well settled. Though by virtue of [Section 116](#) of the Evidence Act, 1872, the tenant is estopped from challenging the title of his landlord during continuance of the tenancy, yet the tenant/lessee is entitled to challenge the derivative title of an Assignee/Vendee of the original landlord (Lessor) of the demised property in an action brought by the Assignee/Vendee against the tenant for his eviction from the demised property under the Rent laws. This right of a tenant is, however,

subject to one caveat that the tenant/lessee has not attorned to the Assignee/Vendee. In other words, if the tenant/lessee pays rent to the Assignee/Vendee of the tenanted property then it results in creation of an attornment between the parties which, in turn, deprives the tenant/lessee to challenge the derivative title of an Assignee/Vendee in the proceedings.”

Therefore, even as per the judgment of the Hon'ble Supreme Court, a tenant has a right to question the derivative title of the vendee of the original landlord; subject to the fact that he has not attorned to the vendee and he proves his challenge to such derivative title by leading cogent evidence. Hence, the plaintiffs in the present case are entitled to challenge the derivative title claimed by defendants.

12. In the present case, the plaintiffs have positively proved his case by showing before the Court that there did not exist any person in the name of Gurinder Singh; as legal representative of Darshan Singh. It is the pleadings of the plaintiffs in the plaint that Gurinder Singh is not legal representative of the Darshan Singh. Further the plaintiffs pleaded in the suit that Gurinder Singh is not related to Darshan Singh and he is not his son. The defendants have not even specifically denied this fact by putting their positive case and by giving any further particulars of Gurinder Singh; in terms of his existence or his address; as it existed on the date of the suit. The Trial Court is legally right in writing and arriving at the conclusion that the mutation in name of Gurinder Singh is fictitious one and there does not exist any person in the name of Gurinder Singh. As per the pleadings and evidence on the file, the said Gurinder Singh has not seen the light of day qua the proceedings in the present case. He is not shown to be present at the time of sanctioning of the impugned mutation. He is not shown to be present at the time of execution of the sale deed. His particulars are not forthcoming from any document on record or pleadings of the defendants. Even general power of attorney, statedly executed by Gurinder Singh, does not mention the address of the said Gurinder Singh. Not only

this, at the time of sanction of the mutation, PW-6 Khareti Lal, is stated to be present. However, he has been examined by the plaintiffs as witness and in his deposition, he has categorically stated that he was not present at the time of any such sanction of the mutation. He has further said that there is no son of Darshan Singh in the name of Gurinder Singh and that he died issueless. The other person who is stated to be present at the time of the mutation is Rachni Devi Lamberdar. However, for the reasons best known to the defendants they have not examined Rachni Devi as witness. Hence, the sanction of mutation in favour of Gurinder Singh is shown to be manipulated and fabricated. This inference is further supported even by the witness examined by the defendants when DW-2, Birsa Ram, says that Darshan Singh was alive and he had seen him about three years back. If Darshan Singh is stated to be alive by the defendants in the year 1990-91, there could not be any eventuality of mutation in favour of Gurinder Singh on the basis of factum of the death of Darshan Singh having taken place on 07.05.1974; as is mentioned in the impugned mutation.

13. Further, so far as the existence of Gurinder Singh as legal representative of Darshan Singh son of Gurbax Singh, the original owner is concerned, there is a specific issue framed by the Trial Court on this point. The onus of prove of this issue was upon the defendants. However, as stated above, the defendants have not even given any particulars of Gurinder Singh in their written statement; in terms of his existence or his residential address etc. Nowhere the defendants have stated as a positive case that there exists a person named as Gurinder Singh and he is or has been a resident of any particular address. No other evidence have been led by the defendants to show the birth of Gurinder Singh in the family of Darshan Singh or regarding the fact any Gurinder Singh existed on the date of death of Darshan Singh in the year 1974. Only presumption drawn by the defendants regarding existence of Gurinder Singh seems to be from the recital in the mutation sanction proceedings

that Gurinder Singh was son of Darshan Singh. However, that is no evidence

regarding the factum of existence or legal status of any Gurinder Singh as son of Darshan Singh. The claim of the defendants regarding Gurinder Singh being the legal representative of Darshan Singh; is also disputed by the testimony of PW-1, Sarban who has categorically deposed that there is no such person named Gurinder Singh. He has further deposed that there was no issue of Darshan Singh and that the said Gurinder Singh is only a fictitious entity. The defendants examined DW-2 Virsa Ram, the neighbour of the parties, to seek to prove the fact that Gurinder Singh is the son of Darshan Singh. However, this witness has done more damage to their case instead of supporting them; because this witness has said that Darshan Singh is still alive and he had seen Darshan Singh about three years back. This version totally goes against the mutation itself; because though the impugned mutation is sanctioned in the year 1995, however, it is based upon the stated factum of death of Darshan Singh in the year 1974. If Darshan Singh was alive then there is no question of any mutation of his properties; unless his death is proved by defendants.

14. The inherent conviction of the defendants that their claim is based on fabricated transactions is further manifested by the fact that the defendants have not produced either Gurinder Singh or the alleged general power of attorney holder, Subhash Chand; as witness; although the later happened to be a defendant in the suit. Not even the attesting witnesses of alleged sale deed have been examined by the defendants. All these attempts to withhold the witnesses shows that the possibility of; either these persons being non-existent or the defendants being afraid of being exposed in their collusiveness; through cross-examination of these persons, if produced as witnesses, cannot be ruled out. Seen from any angle, the defendants have not made any attempt to prove the existence of the legal representative of Darshan Singh, to prove the authenticity of impugned mutation in favour of Gurinder Singh, to prove the authenticity of general power of attorney of Gurinder Singh in favour of Subhash Chand and others or even to prove the impugned sale deed in

their favour.

15. No other argument was raised by the learned counsel for the parties.

16. In view of the above, this Court is of the considered opinion that the lower Appellate Court has wrongly partly reversed the well reasoned judgment and decree passed by the Trial Court. Accordingly, the judgment and decree passed by the lower Appellate Court are set aside. The judgment and decree passed by the Trial Court are upheld.

17. In view of the above, the present appeal is accepted.

23rd March, 2018
shabha

[RAJBIR SEHRAWAT]
JUDGE

<i>Whether speaking/reasoned</i>	-	<i>Yes</i>
<i>Whether reportable</i>	-	<i>Yes</i>