

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

RSA No. 2840 of 2012(O&M)

Date of decision: 15.2.2018

Sohan Singh and others

....Appellants

VERSUS

Ranjit Singh and others

.....Respondents

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. J.S. Brar, Advocate for the appellants.

Mr. B.S. Bhalla, Advocate for the respondents.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against consistent findings recorded by the Courts below whereby suit filed by the appellants/plaintiffs for declaration and possession was dismissed by the trial Court vide judgment and decree dated 20.10.2009 and the appeal preferred by the appellants did not find favour with the Court of District Judge, Faridkot whereby judgment and decree passed by the trial Court were affirmed on 23.11.2011.

The facts relevant for disposal of the present appeal are that as per case set up by the appellants/plaintiffs, originally Bogha Singh son of Jagat Singh was owner of 1/4th share out of land measuring 160 kanal 6 marla. After death of Bogha Singh, his 1/4th share was inherited by Mukhtiar Singh (son), Santo and Partapi daughters of Bogha Singh in equal share. As such Santo, predecessor in interest of the appellants became owner of 1/12th share of land measuring 160 kanal 6 marla. They

have challenged sale deed dated 03.07.1978 executed on behalf of the appellants on the basis of General Power of Attorney dated 04.04.1977 being a false and fabricated document executed by Sh. Mukhtiar Singh in favour of defendants No.1 and 2. It is averred that the appellants never executed General Power of Attorney dated 04.04.1977 in favour of Mukhtiar Singh. They have averred that the sale deed is null and void ab initio in the eye of law.

Respondents No.1 to 4 (defendants No.1 to 4) filed written statements. Respondents No.1 and 2 raised preliminary objections inter alia suit being barred by limitation; not maintainable and not properly stamped. They have denied material averments raised in the plaint with a prayer for dismissal of the suit. However, it was admitted that no Power of Attorney was executed on 04.04.1977 rather it was executed and registered on 03.11.1977 which has been revealed to the answering defendants after inquiry. Plaintiff No.1 purchased the stamps for getting the General power of Attorney on 04.10.1977 but the same was scribed and got registered by the plaintiffs on 03.11.1977. Defendants No.3 and 4 filed separate written statement controverting all the averments raised in the plaint and prayed for dismissal of the suit.

The controversy between the parties led to framing of following issues by the learned trial Court:-

1. Whether plaintiff is entitled to declaration and possession of the land, as prayed for? OPP
2. Whether suit of the plaintiff is not within limitation? OPD
3. Whether proper court fee has not been affixed on the plaint? OPD
4. Relief.

The parties were permitted to adduce evidence in support of their respective contentions. After having heard counsel for the parties in the light of materials on record the trial Court determined issue No.1 against the appellants while issue No.2 was decided in favour of the defendants and eventually suit filed by the appellants was ordered to be dismissed. As has been noticed hereinbefore, findings recorded by the trial Court on issues No.1 and 2 were affirmed and eventually the appeal filed by the appellants was ordered to be dismissed with costs.

Still feeling dis-satisfied, the present appeal has been preferred by the plaintiffs who remained unsuccessful before the Courts below.

Counsel for the appellants has submitted that the appellants never executed power of attorney in favour of Mukhtiar Singh, therefore, he was not competent to sell land belonging to the appellants which was inherited by them on the death of their mother Ms. Santo to the extent of 1/12th share out of land measuring 160 kanal 6 marla i.e. 13 kanal 7 marla 1½ sarsahi. Another submission made by counsel is that even if plea of the appellants that they did not execute power of attorney in favour of Mukhtiar Singh is not accepted and sale by Mukhtiar Singh on behalf of the appellants is held to be valid, out of 19 kanal 11 marlas of land sold by Mukhtiar Singh on behalf of the appellants, himself and Partapi daughter of Bogha Singh, sale on behalf of the appellants would only be to the extent of 1/3rd share of 19 kanal 11 marla. Further submitted that by taking into account land of the share of appellants sold vide sale deed Ex.D2, appellants would still be left with land of their ownership out of 13 kanal 7 marla 1½ sarsahi.

Counsel representing the respondents Sh. B.S. Bhalla, Advocate has supported concurrent findings recorded by the Courts below with the submission that the present appeal does not raise a substantial question of law, to be answered in the second appeal. It is argued that appellants have raised a plea that they did not execute power of attorney on 04.04.1977 but sale deed dated 03.07.1978 Ex.D2 was executed by Mukhtiar Singh on behalf of the appellants as well, on the basis of registered power of attorney dated 03.11.1977. As the appellants did not challenge power of attorney dated 03.11.1977, plea of the appellants to challenge the power of attorney or the sale deed executed on the basis thereof has rightly been rejected by the Courts below.

Another submission made by counsel is that the appellants did not raise an issue before the Courts below that even if sale on their behalf vide sale deed dated 03.07.1978 is upheld, they are still left with a share out of land measuring 160 kanals 6 marlas. In the alternative, it is argued that even if the appellants are left with some right in the land jointly owned by various co-owners, they can file an application seeking partition of joint land and in those proceedings, it would be decided if the appellants are still left with any share in land measuring 160 kanal 6 marlas.

I have heard counsel for the parties and perused the paper-book and records with able assistance of counsel for the parties.

There is no dispute between the parties that Santo, mother of the appellants became entitled to 1/12th share of land measuring 160 kanal 6 marlas on the death of Bogha Singh who was co-owner in the total land to the extent of 1/4th share. Counsel for the appellants has failed to advance any argument much less meaningful to successfully assail concurrent findings of the Courts below qua their entitlement to challenge

the sale deed dated 03.07.1978 executed by Mukhtiar Singh in respect of land measuring 19 kanal 11 marla on behalf of the appellants, Partapi another daughter of Bogha Singh and himself. Contention of the appellants that out of land measuring 19 kanal 11 marlas subject matter of sale deed Ex.D2, share of the appellants to the extent of $\frac{1}{3}^{\text{rd}}$ is deemed to be sold by Mukhtiar Singh is not meritorious and liable to be rejected. Perusal of the sale deed Ex.D2 makes it evident that it has not been mentioned therein that Mukhtiar Singh sold $\frac{1}{3}^{\text{rd}}$ share of the appellants and remaining $\frac{1}{3}^{\text{rd}}$ share each of himself and Partapi. Under the circumstances, sale by Mukhtiar Singh is to be treated as sale of $\frac{1}{5}^{\text{th}}$ share each of the five vendors namely Sohan Singh, Bikkar Singh, Gurmeet Kaur, Mukhtiar Singh and Partapi. As such, Mukhtiar Singh sold $\frac{3}{5}$ share of the appellants qua land measuring 19 kanal 11 marlas and the same comes to 11 kanal 14 marla and 5 sarsahi.

As has been rightly argued by counsel for the appellants that even if sale by Mukhtiar Singh on their behalf is held to be valid, appellants are still entitle to land measuring 1 kanal 12 marla $5 \frac{1}{2}$ sarsahi out of their $\frac{1}{12}^{\text{th}}$ share i.e. 13 kanal 7 marla $1 \frac{1}{2}$ sarsahi.

Counsel for the respondents has raised an issue that no such plea has been raised by the appellants before the Courts below. This contention of counsel for the respondents is mis-conceived and untenable. As the appellants have claimed declaration qua their rights in the suit land to the extent of $\frac{1}{12}^{\text{th}}$ share by challenging the sale deed dated 03.07.1978, the Courts were under an obligation to examine that even if the sale deed is held to be valid whether the appellants are still entitled to declaration qua a part of land claimed by them. As per the settled position in law, the court is competent to accept a part of the claim or allow a moulded relief to a

successful litigant. Equally settled is that the Court in appeal is required to pass a decree that ought to have been passed by the trial Court by invoking Order 41 Rule 33 of the Code of Civil Procedure, 1908.

Plea of the respondents that even if the appellants are left with any share in the suit land, they can well file an application for partition and seek determination of their share in those proceedings is misconceived. If claim of the appellants that they are owners of suit land or a part thereof is rejected by the civil court, where is the occasion for revenue authorities to examine this aspect much less to accept their claim. In this view of the matter, contentions raised by counsel for the respondents are devoid of merit thus untenable. In view of the above, appellants are entitled to declaration that they are owners in the suit land to the extent of 1 kanal 12 marla 5 ½ sarsahi and are entitled to joint possession thereof to that extent. However, this Court has not specifically framed a substantial question of law in the light of latest judgment of Hon'ble the Supreme Court **Pankajakshi (dead) through LRs and others Vs. Chandrika and others, 2016(2) RCR (Civil) 248.**

For the foregoing reasons, the appeal is partly allowed. Suit filed by the appellants is partly decreed. Resultantly, judgments and decrees passed by the Courts below are modified to the extent that the appellants are co-owners to the extent of 1 kanal 12 marla 5 ½ sarsahi in land measuring 160 kanal 6 marla and they are entitled to joint possession of suit land to that extent. No order as to costs.

FEBRUARY 15, 2018

'D. Gulati'

**(REKHA MITTAL)
JUDGE**

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no