

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:24.9.2018

RSA No. 777 of 2012(O&M)

Prem Chand

---Appellant

vs.

Bal Kishan

---Respondent

RSA No. 778 of 2012(O&M)

Prem Chand

---Appellant

vs.

Bal Kishan

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sanjeev K. Panwar, Advocate
for the appellant

Mr. Y.P.Khullar, Advocate
for the respondent

Rekha Mittal, J.

This order will dispose of RSA Nos. 777 and 778 of 2012 as these have emerged out of the same judgments and decrees and involve identical questions of law and fact for adjudication. For brevity, facts are taken from RSA No. 777 of 2012.

The parties to the lis are Bal Kishan and Bane Singh, real brothers being sons of Sh. Hira Lal alias Hari Lal. Prem Chand appellant is

the son of Bane Singh. There is no dispute between the parties that property left behind by Sh. Hira Lal alias Hari Lal was inherited by his heirs on the basis of testamentary succession in view of registered will dated 5.3.1993 executed by Sh. Hira Lal alias Hari Lal.

The dispute between the parties is in respect of '*Hak Adhikar Tyag Patra*' (Dastbardari Nama) dated 7.9.2001 registered on 14.9.2001 in respect of land measuring 5 kanal 11 marlas i.e. 1/5th share in land bearing Rect. No. 256, Killa No. 21/1 (5-0), 257//15/2(1-14), 16/2(6-2), 17 (7-9), 24 (7-9) measuring 27 kanal 14 marlas. The respondent-plaintiff Bal Kishan in suit No. 95 of 2006 has set up the aforesaid deed executed by Bane Singh on receipt of Rs. 3,35,000/- and challenged the registered '*Hak Adhikar Tyag Patra*' bearing No. 828 dated 16.12.2005 executed by Bane Singh in favour of Prem Chand in respect of the same land.

Bane Singh and Prem Chand filed Civil Suit No. 149 of 2006 against Bal Kishan that Bane Singh is the owner in possession to the extent of 1/5th share in agricultural land, detailed in para 1 of the plaint as the said land is ancestral property inherited by him from his father Sh. Hira Lal alias Hari Lal. He has relinquished his 1/5th share in the said land in favour of defendant No. 1 Prem Chand, vide registered relinquishment deed dated 16.12.2005 bearing No. 828 registered with Sub Registrar, Palwal. It is further averred that defendant Bal Kishan has manufactured relinquishment deed on 7.9.2001 fraudulently and in fact plaintiff No. 1 never relinquished his right in favour of defendant. The said relinquishment deed dated 7.9.2001 is illegal, null and void and not binding upon rights of plaintiff No. 1 qua the suit property and liable to be set aside

on the grounds mentioned in para 4 (a) to (h) of the plaint. Plaintiff No. 2 made a complaint against defendant regarding the same to the Police Station, City Palwal and FIR No. 57 dated 1.2.2006 under Sections 406, 420 and 506 of the Indian Penal Code was lodged against the defendant and he is facing trial. The defendant on the basis of impugned relinquishment deed is intending and threatening to alienate the suit land.

Both the aforesaid cases were consolidated and decided by the trial court vide judgment and decree dated 28.8.2010. The suit filed by Bal Kishan (respondent herein) was dismissed whereas suit filed by Bane Singh and another was decreed. Consequently, relinquishment deed dated 7.9.2001 was declared to be illegal, null and void and eventually set aside.

Feeling aggrieved against the judgment and decree passed by the trial court, Bal Kishan respondent filed two appeals before the Court of Additional District Judge, Palwal to assail the judgments and decrees passed in both the suits and the same were disposed of vide common judgment and decree dated 11.1.2012 by the Additional District Judge, Palwal, judgments and decrees passed by the trial court were set aside and suit filed by Bal Kishan staking his claim to land in question on the basis of relinquishment deed dated 7.9.2001 was allowed and the subsequent relinquishment deed dated 16.12.2005 Ex. D1/DW2/A executed by Bane Singh in favour of Prem Chand was held to be illegal, null and void, having no bearing on rights of appellant-plaintiff Bal Kishan.

The present appeals have been filed to challenge the judgment and decree dated 11.1.2012 passed by the Appellate Court.

Counsel for the appellant has assailed verdict of the first

appellate court on few grounds. The first submission made by counsel is that if Bane Singh has actually executed the relinquishment deed in favour of the respondent, why the respondent did not approach the revenue authorities for sanction of mutation on the basis thereof till the year 2005. It is further argued that if Bal Kishan had paid a sum of Rs. 3,35,000/- to Bane Singh in regard to relinquishing right in land measuring 5 kanal 11 marlas why didn't he get a sale deed executed in place of a relinquishment deed. The relinquishment deed Ex. P1 does not make reference to payment of Rs. 3,35,000/-. On the contrary, it has been recited therein that the same is being executed without any consideration (Muawza).

Counsel has also raised a legal issue that simpliciter suit for declaration without claiming relief of possession is hit by the proviso appended to Section 34 of the Specific Relief Act, therefore, suit filed by Bal Kishan is liable to be dismissed on this score alone.

Counsel representing the respondent has supported the judgment and decree passed by the Court in Appeal with the submission that error committed by the trial court has rightly been rectified by the Appellate Court on detailed consideration of the factual and legal aspects involved in the case. It is vehemently argued that to prove the document dated 7.9.2001 registered on 14.9.2001, the respondent examined the scribe and one of the attesting witnesses namely Subhash Chand who is none else but sister's husband of Bal Kishan and Bane Singh. The other attesting witness of the document is Lachhi Ram, maternal uncle of Bal Kishan and Prem Chand. Prem Chand in his cross examination has admitted that Lachhi Ram does not have strained relations with family of Bane Singh. Further argued that

Prem Chand in his cross examination has made vital admissions in favour of the respondent and the same have been correctly taken note of by the appellate court but trial court has wrongly ignored the facts elicited in cross examination of Prem Chand.

The appellant examined Rajender Singh Ex-Nambardar to substantiate his plea that relinquishment deed dated 7.9.2001 is the result of fraud practised by Bal Kishan on Bane Singh but the appellate court has discarded his testimony because affidavit of Rajinder Singh Ex. DW1/A tendered into evidence by way of examination in chief does not bear his signatures, thus, has no evidential value. It is further argued that the appellant brought on record document dated 3.4.2001 Mark D2 i.e. agreement for sale of suit land by Bane Singh in favour of Bal Kishan but the said document has neither been proved in accordance with law nor can be taken into consideration in favour of the appellant being beyond pleadings. The said document rather substantiates plea of the respondent that Bane Singh wanted to transfer the land in question in favour of Bal Kishan which was actually transferred vide relinquishment deed Ex. P1 and payment of Rs. 3,35,000/- stands proved on the basis of receipt Ex. P2, attested by Subhash Chand PW2.

I have heard counsel for the parties, perused the paper book and records.

Bane Singh did not appear in the witness box as he passed away during pendency of the suit and Prem Chand his son was impleaded as his legal representative. The appellant and his father has raised a plea that the document Ex. P1 is the result of fraud played upon Bane Singh by Bal

Kishan. As per the settled position in law, a party who raises a plea of fraud to assail a transaction has to substantiate his plea akin to a criminal charge. In the instant case, Bane Singh has not been examined to say something as to how the document in question is the result of fraud practised upon him. Testimony of Prem Chand is not at all sufficient to substantiate this plea of the appellant. On the contrary, Prem Chand has made certain admissions in his cross examination which have been correctly noticed by the Court in Appeal. The appellant examined Rajender Singh, Ex-Nambardar DW2 to establish his plea that relinquishment deed Ex. P1 is the result of fraud. As has been contended by counsel for the respondent, the appellate court has rightly discarded testimony of Rajender Singh, Ex-Nambardar because affidavit tendered by him by way of examination in chief does not bear his signatures, therefore, that is no affidavit in the eye of law. There is nothing on record suggestive of the fact that either the appellant or said Rajender Singh ever filed an application before the courts for permitting Rajender Singh to rectify that error or to tender a fresh affidavit with his signatures by way of examination-in-chief. In the given scenario, the appellate court has rightly held that testimony of Rajender Singh, Ex-Nambardar cannot be read into evidence in support of plea of the appellant that relinquishment deed Ex. P1 is the result of fraud. Conversely, Rajender Singh has admitted signatures of Bane Singh on the document with the plea that his signatures were obtained on blank papers. It is never plea of the appellant or his father that relinquishment deed has been prepared on blank signatures of Bane Singh. Prem Chand appellant has not denied that the relinquishment deed bears thumb impression of his father. In this view of the matter, it can

safely be held that the appellant has failed to substantiate his plea that relinquishment deed Ex. P1 is the result of fraud and liable to be set aside.

Indisputably, mutation was not sanctioned on the basis of relinquishment deed of 2001. Bal Kishan instituted the suit in January 2006. Prior thereto, Bane Singh executed relinquishment deed in favour of Prem Chand on 16.12.2005. Relinquishment deed is a document registered on 14.9.2001. On registration of a document, it is an obligation of the registering authority to send a copy thereof to the revenue authorities for making necessary entry for sanction of mutation. The mere fact that Bal Kishan did not file an application for sanction of mutation does not lead to conclusion that the relinquishment deed is the result of fraud.

Bal Kishan and Subhash Chand have consistently stated that on the advice of deed writer, relinquishment deed was prepared taking into consideration close relationship between Bal Kishan and Bane Singh. A statement to the similar effect has been made by the scribe examined by the respondent. There is nothing on record if in the year 2001, any Collector's rates were fixed for executing a sale deed. If both the brothers with an intent to save payment of stamp duty etc. has accepted advice of the deed writer and executed a relinquishment deed in place of sale deed, the appellant cannot take advantage of wrong committed by his father. Plea of the appellant that Ex. P1 does not make reference to payment of Rs. 3,35,000/- is of no consequence for the reason that had the parties mentioned payment of Rs. 3,35,000/-, they could not get register a relinquishment deed because in that eventuality they could transfer the land on payment of requisite stamp duty and registration charges.

The appellant produced document Mark D2. No such plea was raised in the written statement by the appellant qua agreement of sale between Bane Singh and Bal Kishan, therefore, the appellant cannot derive any advantage to his contention from Mark D2. On the contrary, this document goes in favour of the respondent to prove that Bane Singh intended to transfer the suit land in favour of Bal Kishan and the relinquishment deed Ex. P1 represents real intent of Bane Singh.

Counsel has raised a legal issue with regard to non-maintainability of the suit for failure of respondent to seek consequential relief of possession in respect of land, subject matter of relinquishment deed Ex. P1. Indisputably, the respondent is a co-owner of total land of which the land in dispute measuring 5 kanal 11 marlas is a part and parcel. As per the settled position in law, every co-owner is deemed to be in possession of every inch of joint land, therefore, failure of the respondent to seek relief of joint possession qua the suit land is of no consequence nor his failure to do so attracts the bar created under proviso appended to Section 34 of the Specific Relief Act.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed with costs. As a natural corollary, judgment and decree passed by the Court in Appeal are affirmed.

(Rekha Mittal)
Judge

24.9.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No