

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

RSA No.183 of 2016
Date of decision: 18.05.2018

Jagtar Singh and others

... Appellants

Versus

Jasbir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Balbir Singh Jaswal, Advocate for the appellants.

ARUN PALLI, J. (Oral)

Suit filed by the appellants/plaintiffs was dismissed by the trial Court, vide judgment and decree dated 29.02.2012. As even the appeal preferred against the said decree failed and was dismissed by the appellate Court on 20.05.2015, they are in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiffs prayed for a declaration that they were owners of the property measuring 5 kanals 16 marlas, as also the land measuring 6 kanals 4 marlas, comprised in separate khasra, situated in village Wadali Guru, Sub-Urban, Tehsil and District Amritsar, for they had purchased the same from defendant No.1. Further, the sale deed dated 24.02.1994, vide which a land measuring 5 kanals 16 marlas was transferred in the name of Jasbir Kaur and Harjit Kaur (defendants No.3 & 4) and the sale deed of an even date whereby an area measuring 6 kanals 4 marlas was sold to Mohinder Kaur (defendant No.5), be declared as illegal, null and void. Likewise, the

compromise dated 30.04.2001 entered into between the defendants as also the decree of an even date rendered by the Additional District Judge, Amritsar in appeal titled “Bawa Singh son of Didar Singh and others v. Jasbir Singh and another” were also invalid and inoperative qua the rights of the plaintiffs.

In brief, the case set out by the plaintiffs was that Jasbir Singh son of Kapur Singh (defendant No.1) was the owner of the suit property and as he was residing at village Jalana Aurangabad (Maharashtra), he executed a Special Power of Attorney in favour of Bawa Singh (defendant No.2) to look after and cultivate his land measuring 5 kanals 16 marlas. However, as defendant No.2 failed to render the accounts as regards the agricultural produce out of the suit property, notice for revocation of the Special Power of Attorney was served upon defendant No.2. Later, it also transpired that defendant No.2 by playing fraud and misrepresentation had even executed two sale deeds dated 24.02.1994 qua a land measuring 5 kanals 16 marlas, comprised in khasra No.18/7/1, in the name of defendants No.3 & 4, and vide another sale deed transferred an area measuring 6 kanals 4 marlas, comprised in khasra No.24/18, in favour of defendant No.5. Resultantly, defendant No.1, through Jagtar Singh (plaintiff No.1) as his attorney filed a suit assailing the said two sale deeds. The said suit was decreed by the Civil Judge (Jr. Divn.), Amritsar, vide judgment and decree 17.01.2000. Defendants No.2 to 5 filed an appeal against the said decree, but during the pendency of the said appeal Jasbir Singh (defendant No.1) sold the suit property in favour of the plaintiffs, vide sale deed dated 25.03.2000. Resultantly, the plaintiffs became owners of the suit properties. Only the symbolic possession was delivered, as Jasbir Singh had assured the plaintiffs

that after obtaining possession through the Court, the plaintiffs would be delivered the actual physical possession of the suit land. But later Jasbir Singh (defendant No.1) entered into a compromise dated 30.04.2001 with the defendants in the present suit, which was produced before the Court that was ceased of the appeal preferred by defendants No.2 to 5 on the same day. In terms of the compromise, it was conceded that defendant No.1 had validly executed the Power of Attorney in favour of Bawa Singh (defendant No.2) and the sale deeds executed in favour of defendants No.3 to 5 were valid. Resultantly, the appeal was accepted, the decree dated 17.01.2000 rendered by the trial Court was set aside, and the suit filed by defendant No.1 was dismissed as withdrawn. However, when the plaintiff Jagtar Singh came to know of this, he moved an application under Section 151 CPC to review the order dated 30.04.2001 and hear the appeal on merits. But the said application was dismissed being not maintainable and the plaintiffs were required to file a separate suit on the basis of the sale deeds that were executed by defendant No.1 in their favour. Thus, the suit.

In the written statement filed on behalf of defendants No.2, 3 & 5, it was pleaded that the sale deeds executed by Jasbir Singh (defendant No.1) in favour of the plaintiffs were in defiance of the order of injunction passed in appeal preferred by defendants No.2 to 5 and despite the appeal being pending adjudication. A compromise between the defendants was arrived at in open Court, which was lawfully attested. Further, the sale deeds executed by defendant No.1 in favour of the plaintiffs were hardly of any consequence as the property already stood sold to defendants No.3 to 5.

For defendants No.1 & 4 did not choose to appear despite service, they were proceeded against ex parte.

On a consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that the plea set out by the plaintiffs that the defendants had committed fraud by entering into a compromise dated 30.04.2001, and consequently the judgment and decree dated 30.04.2001 obtained on the basis thereof was also invalid, remained unsubstantiated. Just because Jagtar Singh (plaintiff No.1 in the present case) happened to be the attorney of Jasbir Singh in the earlier litigation, nothing could prohibit Jasbir Singh (defendant No.1) to pursue the matter in appeal filed by defendants No.2 to 5. For he himself was the plaintiff the said suit. Likewise, the argument that Jasbir Singh made a false statement in Court, for he accepted the sale deeds executed in favour of defendants No.3 to 5 to be valid was equally erroneous. Concededly, Jasbir Singh (defendant No.1) happened to be the owner of the suit property, and thus he could always enter into a settlement or a compromise with the defendants. No doubt, the sale deeds dated 24.02.1994, executed on behalf of defendant No.1 in favour of defendants No.3 to 5, were declared invalid vide judgment Ex.P13, but as the matter was compromised between the defendants, defendant No.1 ratified the said sale deeds. Thus, the act of ratification of those sale deeds would relate back to the date of execution and registration thereof i.e. 24.02.1994. Ex facie, the suit property was allegedly purchased by the plaintiffs vide sale deeds dated 25.03.2000, therefore, the sale deeds executed in favour of defendants No.3 to 5 were prior in point of time. Meaning thereby, the subsequent sale deeds dated 25.03.2000 could not vest any valid title in the plaintiffs and they could not be declared owners thereof. Further, the appeal is the continuation of the suit and when the sale deeds dated 25.03.2000 were executed in favour of the plaintiffs the appeal bearing

No.54/2000 titled “Bawa Singh v. Jasbir Singh” challenging decree dated 17.01.2000 was pending. As indicated earlier, the sale deeds dated 25.03.2000 were executed in favour of the plaintiffs despite *ad interim* injunction regarding alienation of the suit property. In any event, the execution of the sale deeds in favour of the plaintiffs was always subject to the rights of defendants No.2 to 5, and the transaction, if any, as regards suit property during the pendency of the appeal filed by them was hit by doctrine of *lis pendens*. Further, even if, it was assumed for a moment that no compromise was arrived at between the defendants yet the execution of the sale deeds in favour of the plaintiffs was always subject to the final decision in the appeal preferred by defendants No.2 to 5. Still further, a perusal of the sale deed (Ex.P1) showed that a land measuring 6 kanals 8 marlas was sold by defendant No.1 (Jasbir Singh) in favour of plaintiff No.1 (Jagtar Singh) for a sum of Rs.16,500/-. Similarly, vide sale deed (Ex.P2), an area measuring 5 kanals 16 marlas was transferred by defendant No.1 in favour of plaintiffs No.1 to 3 for the same consideration i.e. Rs.16,5000/-. On the contrary, a perusal of the sale deed dated 24.02.1994 (Ex.DW5/1) showed that the land measuring 5 kanals 16 marlas was sold in favour of defendants No.3 & 4 for a sum of Rs.96,000/-. Likewise, a land measuring 6 kanals 4 marlas was alienated in favour of defendant No.5 for an equal consideration. Thus, it was highly improbable that the same land was sold for a sum of Rs.96,000/- on 24.02.1994 and over six years later for Rs.16,500/-. Rather, it appears that the sale deeds executed by defendant No.1 in favour of the plaintiffs during the pendency of the appeal, filed by defendants No.2 to 5, were a sham transaction or a mode resorted to frustrate the rights of defendants No.2 to 5 only. For, plaintiff No.1 was the attorney of defendant

No.1 in the earlier suit and plaintiffs No.2 & 3 are his real brothers. Thus, the only and the inevitable conclusion that could be reached; the suit filed by the plaintiffs was devoid of merit and thus was liable to be dismissed.

Learned counsel for the appellants/plaintiffs merely reiterated the submissions that were advanced and duly dealt with by both the Courts. On being pointedly asked, he could not refer to anything from on record to show if the findings recorded by the Courts below were either contrary to the record or suffered from any material illegality. No other argument was advanced. Thus, no question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

18.05.2018
Rajan

Whether speaking / reasoned:
Whether Reportable:

YES
NO