

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

**RSA-2472-2016 (O&M)  
Date of Decision: 30.07.2018**

Satwant Singh & others

... Appellants

Versus

Chanan Singh

... Respondent

**CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.**

Present:- Mr. Premjit Kalia, Advocate for the appellants.

...

**TEJINDER SINGH DHINDSA, J. (ORAL).**

Plaintiff/appellants are in second appeal before this Court having remained unsuccessful in both the Courts below.

2. Briefly noticed, a suit for declaration was instituted by the plaintiffs to the effect that they are owners to the extent of half share in respect of land measuring 78 kanals and 13 marlas situated at Village Lakhowal, Tehsil Ajnala, District Amritsar and as per details furnished in the plaint. Consequential relief of permanent injunction was also sought for restraining the defendant from alienating the suit property in any manner.

3. Case set up on behalf of the plaintiff/appellants was that the suit land measuring 78 kanals, 13 marlas was previously under the ownership of Nand Singh and Charan Singh, who were jointly cultivating the land. Charan Singh was the father of plaintiffs. Plaintiffs were stated to be in service and the defendant who was son-in-law of Nand Singh had played a fraud upon father of the plaintiffs and in pursuance thereto, a fraudulent sale deed was

got executed by Charan Singh in favour of the defendant. It was averred that the sale deed, if any, is null, void, forged and fabricated and the result of misrepresentation. Plaintiffs asserted that there were still owners to the extent of half share to the suit land. The Halqa Patwari had been approached and upon obtaining copy of *jamabandi*, they became aware of the fraud played by the defendant upon the father of the plaintiffs and hence the suit.

4. Suit was contested by the defendant taking a stand that he had purchased the suit land from Nand Singh and Charan Singh vide registered sale deed dated 22.05.1967 for valuable consideration and ever since, he was in possession of the same. Even mutation in pursuance to the sale deed dated 22.05.1967 had been duly sanctioned and entered.

5. Suit of the plaintiffs was dismissed by the trial Court on 06.12.2013 and even a civil appeal preferred has met the same fate in terms of impugned judgment dated 06.08.2015 passed by the learned District Judge, Amritsar.

6. Counsel for the appellant would strenuously argue that it is a case of misreading and mis-appreciation of evidence. It is submitted that prior to sale deed in question dated 22.05.1967, an agreement to sell dated 06.05.1966, Ex.D1 was also stated to have been entered into and on which Balwant Singh one of the plaintiffs' was alleged to be an attesting witness. Balwant Singh while appearing as PW1 in his cross-examination had clearly stated that the agreement in question does not bear his signatures. An application had been moved in the trial Court seeking permission for comparison of his signatures on the agreement in question and which was dismissed by the trial Court vide order dated 02.12.2012. Thereafter, a

revision was filed and the High Court allowed the same vide order dated 16.07.2013 passed in CR-1170-2012. Thereafter, plaintiffs had examined Sukhpreet Kaur, finger print and handwriting expert as PW3 and got signatures of Balwant Singh appearing on Ex.D1 i.e. agreement to sell dated 06.05.1966 compared. In the report of the finger print and handwriting expert, Ex.PW3/1, it had been opined that the signatures do not match. Counsel would contend that such aspect has been brushed aside by the Courts below and which was a material aspect to indicate that the sale deed in question was fraudulent.

7. Having heard counsel for the plaintiff/appellants at length and having perused the case paper book, this Court is of the considered view that the instant appeal is without merit and deserves to be dismissed.

8. In the facts and circumstances of the case, the opinion of the finger print and handwriting expert as regards signatures of one of the plaintiffs', Balwant Singh as an attesting witness to an agreement to sell dated 06.05.1966 to be not matching would not be of any consequence. No evidence was adduced on record to shatter the veracity of a registered sale deed dated 22.05.1967, Ex.D5A and in pursuance to which even the mutation had been duly sanctioned. One material fact which may be taken notice is that the vendor Charan Singh died in the month of May, 1994. The registered sale deed was executed on 22.05.1967. During his lifetime, Charan Singh never challenged the sale deed even though PW Balwant Singh clearly admitted in his deposition that the defendant had been in continuous possession of the suit land since the year 1967.

9. That apart, it is well settled that if a plaintiff has been in

possession of the suit property then a suit for mere declaration would be maintainable. The corollary whereof is that if the plaintiff is not in possession as is the conceded position in the facts of the present case, a suit for mere declaration would not be maintainable. A reference in this regard may be made to the decision of the Apex Court in **Vinay Krishna Vs. Keshav Chandra, AIR 1993 SC 957**. Even on this count, the suit of the plaintiff/appellants must fail.

10. The impugned judgments are well reasoned.

11. The instant appeal does not raise any question of law much less substantial question of law.

No merit.

Dismissed.

**30.07.2018**

*harjeet*

**(TEJINDER SINGH DHINDSA)  
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No