

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 2115 of 2015(O&M)

Date of Decision:23.2.2018

Paramjit Singh and others

---Appellants

vs.

Ujagar Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Veneet Sharma, Advocate
for the appellants

Rekha Mittal, J.

The present appeal directs challenge against consistent findings recorded by the courts below whereby suit filed by the respondent-plaintiff to assail *tabadlanama* (Transfer Deed) dated 12.12.2003 for Rs. 33,75,000/- executed by Sudagar Singh in favour of the appellants (defendant Nos. 2 to 5) transferring 44 kanals 2 marlas of land situated at village Meeran Kot Kalan, Tehsil and District, Amritsar, detailed in head note of the plaint and consequential relief of permanent injunction restraining appellants from alienating or parting with possession of suit land in favour of a third party was partly decreed by the trial court to the effect that *tabadlanama* (Ex. P1) executed by defendant No. 1 in favour of defendant Nos. 2 to 5 qua suit property is illegal, null and void to the extent of 16 kanal 5 marlas and the same is set aside to that extent and a decree for

injunction was passed restraining defendant Nos. 2 to 5 (appellants herein) from alienating land more than their share i.e. 27 kanals 17 marlas out of suit property in any manner whatsoever. The appeal preferred by the appellants did not find favour with the Additional District Judge, Amritsar and consequently findings recorded by the trial court were affirmed.

In short, case of the respondent-plaintiff is that Vir Singh, father of the plaintiff and defendant No. 1 was owner in possession of the land in question. After his (Vir Singh's) death in the year 1975, his property devolved upon the plaintiff and defendant No. 1 to the extent of $\frac{1}{2}$ share each. Defendant No. 1 without written consent and knowledge of the plaintiff executed *tabadlanama* dated 12.12.2003 in favour of his sons, defendant Nos. 2 to 5 qua land measuring 44 kanals 2 marlas out of total land measuring 55 kanals 14 marlas with a mala fide intention to grab share of the plaintiff to which he had no right. The plaintiff is a non-resident Indian, left India in 1968 and settled in United Kingdom. In his absence, defendant No. 1 being his real brother was entrusted with management, control and administration of the entire land but he has transferred more than his share to his sons to which he had no right.

The appellants/defendants No. 2 to 5 filed the written statement raising preliminary objections that the suit is not legally maintainable; suit has been filed against defendant No. 1 who has since died; suit is not properly valued for the purpose of court fee and jurisdiction; suit has been filed by concealing material facts from the Court. It has been averred that suit land has since been partitioned between the plaintiff and defendant No. 1 and as such, defendant No. 1 being owner of land measuring 44 kanals 2

marlas was competent to execute the sale deed in favour of defendant Nos. 2 to 5 on the basis of oral partition which was subsequently reduced into writing on 18.3.2014 vide Exchange Deed, signed by the plaintiff and defendant No. 1 in presence of the witnesses whereby land measuring 55 kanals 14 marlas, detailed in the written statement as per jamabandi for the year 2001-02 had been given to defendant No. 1 whereas land situated at village Bal Sanchander was given to the plaintiff and on the basis of exchange deed, defendant No. 1 became absolute owner in possession of land measuring 55 kanals 14 marlas and has rightly transferred the same in favour of defendant Nos. 2 to 5.

The trial court framed issues and permitted the parties 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 partly decreed suit of the respondent/plaintiff, as noticed hereinbefore. The appellants remained unsuccessful in the appeal preferred before the District Judge, Amritsar.

The sole submission made by counsel for the appellants is that the entire land owned by the respondent/plaintiff and father of the appellants/defendant Nos. 2 to 5 situated in two different villages i.e. Meeran Kot Kalan, Tehsil and District Amritsar and Bal Sanchander was orally partitioned between father of the appellants and Ujagar Singh and the said partition was later reduced into writing vide partition deed dated 22.3.2004 (Ex P-2), therefore, courts have seriously erred by partly accepting claim of the respondent/plaintiff. Ujagar Singh PW1 in his cross examination has candidly and categorically admitted that exchange deed

dated 18.3.2004, photocopy of which has been shown to him, was signed by him. He has admitted the original exchange deed dated 18.3.2004 (Ex. D2). He has also admitted that he is in possession of entire land situated in village Bal Sanchander. According to counsel, the fact that Ujagar Singh is in possession of entire land situated in village Bal Sanchander, which is opposite to International Airport and father of the appellants was in possession of land situated at village Meeran Kot Kalan, substantiates plea of the defendants that land situated in two villages and co-owned by Ujagar Singh and Sudagar Singh was orally partitioned between the co-owners though the writing was executed on 22.3.2004. It is further argued that the courts have failed to correctly appreciate the factum of separate possession of land of two villages by the two brothers, therefore, committed a serious error by partly setting aside *tabadlanama* dated 12.12.2003.

The trial court in para 10 has noticed that defendant Nos. 2 to 5 did not step into witness box to strengthen their claim qua partition deed (Ex. P2) and exchange deed (Ex. D2) rather they set up another partition deed alleged to have been recorded in a note book dated 28.9.1982 (Ex. D1). Further it has been held that even if partition deed Ex. P2, Ex. D1 and exchange deed Ex. D2 relied upon by defendant Nos. 2 to 5 are taken as correct, the same cannot be relied upon being unregistered documents.

The Court in Appeal, in para 14 of the judgment, has held that date, month and year of such oral partition is not mentioned in the written statement. In evidence, they produced diary writing of the year 1982 to support such oral partition. However, if partition was oral, then diary writing itself contradicts case of the defendants. Moreover, this diary

writing dated 22.9.1982 mark 'X' is beyond pleadings and cannot be read in evidence of the defendants. Plaintiff Ujagar Singh denied writing mark 'X'. Further held that if oral partition regarding land has been done and writing dated 22.9.1982 mark 'X' was also executed, purpose of writing / exchange deed dated 18.3.2004 is not understandable.

Counsel for the appellants has failed to challenge correctness of factual findings recorded by the courts below. The mere fact that Ujagar Singh respondent has admitted himself to be in possession of entire land measuring 20 kanals 11 marlas situated in village Bal Sanchander is not a conclusive evidence of any such oral partition between Ujagar Singh and Sudagar Singh whereby Ujagar Singh was left with no right, title or interest in land measuring 55 kanals 14 marlas situated in village Meeran Kot Kalan. Counsel would fairly inform that diary writing dated 22.9.1982 is not a part of pleadings of the appellants. As the appellants failed to establish any oral partition between Sudagar Singh and Ujagar Singh prior to execution of *tabadlanama* dated 12.12.2003 executed by Sudagar Singh in favour of the appellants, transfer of land more than share of Sudagar Singh vide document Ex. P1 or land to the extent of share of Ujagar Singh transferred in favour of defendants No. 2 to 5 without any authority has rightly been set aside by the courts. In this view of the matter, I do not find an error much less perversity in concurrent findings recorded by the courts whereby part of claim of the respondent/plaintiff has been accepted qua relief of declaration as well as injunction. As a matter of fact, the present appeal does not give rise to a substantial question of law that requires to be decided by hearing the contesting party.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay is of academic relevance only.

(Rekha Mittal)
Judge

23.2.2018
paramjit

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