

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

**RSA No.223 of 2015 (O&M)
Date of decision:16.05.2018**

Jeet Singh

... Appellant

Vs.

Narinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. D.S.Malwai, Advocate
for the appellant.

Mr. S.S.Salar, Advocate
for respondents No.1 to 4.

AMIT RAWAL J.

Appellant-defendant No.1 is in Regular Second Appeal against the judgments and decrees of the Courts below, whereby, suit of the respondent-plaintiffs seeking declaration that they were owners in possession of one electric motor bearing No.CF-520 of 5HP located in khasra no.452 situated in the revenue estate of village Bathan, Tehsil Malerkotla, District Sangrur; with a further prayer for permanent prohibitory injunction restraining defendants No.1 and 2 from alienating, shifting or getting disconnecting the aforementioned electric motor, has been decreed by the trial Court and upheld by the Lower Appellate Court.

The aforementioned suit was filed on the premise that appellant/defendant No.1-Jeet Singh son of Bishan Singh was the owner in possession of land measuring 57 bighas 11 biswas alongwith two electric

motors. Vide registered deed dated 29.7.2002, he gifted the property alongwith two electric motors to his only son Nirbhai Singh. Vide registered sale deed dated 25.08.2003, Nirbhai Singh sold two electric motors and connections alongwith 22 bighas of land to Gamdoor Singh son of Kirpal Singh/defendant No.3 and also transferred the electric motor. Defendant No.3, vide two registered sale deeds dated 28.10.2003 and 05.05.2004, transferred the aforementioned land, purchased from Nirbhai Singh to the plaintiffs and also relinquished the ownership of the motor in dispute alongwith kotha and taur and ½ share of the motor was sold through sale deed dated 28.10.2003 and second share was sold vide sale deed dated 05.05.2004. Thus, for all intents and purposes, the plaintiffs became the owners in possession of the land alongwith motors. The plaintiffs requested Jeet Singh and Gamdoor singh to get the motor connection in dispute transferred in their name but the matter was put off on one pretext or the other, therefore, cause of action arose to file the suit.

Appellant-defendant No.1/Jeet Singh contested the suit on the ground that he was owner in possession of the electric motors in dispute alongwith 57 bighas 11 biswas of land. The gift deed dated 29.07.2002 was a result of fraud and misrepresentation played by defendant no.2, who had obtained the thumb impressions of defendant no.1. Thus, defendant no.2-Nirbhai Singh had no legal right to sell the land measuring 22 bighas to defendant no.3 or transfer the electric motor to defendant No.3. Defendant no.1 reserved his right to challenge the sale deeds dated 29.07.2002 and 25.08.2003. Defendant no.3 admitted that he has purchased 22 bighas of

land from defendant no.2 and sold 22 bighas of land to the plaintiffs. Defendants no.4 to 6 admitted that electric motor had been issued in the name of defendant no.1 and the same was still running in his name.

Since both the parties were at variance, the trial Court framed as many as four issues including the issue of Relief. The plaintiffs examined six witnesses and brought on record the documentary evidence Ex.P1 to Ex.P8 and photocopy of the pass book as Mark A, whereas, appellant-defendant No.1 examined two witnesses and brought on record Ex.D1 and Ex.D2.

The Courts below on the preponderance of evidence particularly on the basis of terms and conditions of sale deed and gift deed found that not only the land but electric motor was also sold and decreed the suit. The appeal laid before the Lower Appellate Court also met with the same fate.

Mr. D.S.Malwai, learned counsel appearing on behalf of appellant-defendant No.1 submitted that plaintiffs were owners of land to the extent of their share in the joint khata and therefore, they did not acquire the full ownership in the aforementioned electric motor. Both the Courts below have committed illegality and perversity by presuming that the appellant had transferred his 57 bighas 11 biswas of land to his son Nirbhai Singh by gift deed but the official of Electricity Board admitted the fact that from electric motor in question 36 bighas of land was being irrigated which included 22 bighas alleged to be purchased from Gamdur Singh. Both the Courts below lost sight of the fact that no affidavit from the appellant in

favour of Nirbhai Singh for transferring the electric connection was ever executed and urged this Court for setting aside the findings under challenge.

Per contra, Mr. S.S.Salar, learned counsel appearing on behalf of respondents No.1 to 4 submitted that as per the sale deed dated 25.08.2003, not only the land but electric motor alongwith constructed portion and certain other attachments were sold to defendant no.3. Both the Courts below did not commit any illegality and perversity in decreeing the suit, for, defendant no.3 also acquired the right in the same manner from Nirbhai Singh. No counter claim was set up to challenge the sale deed despite the fact that right had been reserved and thus, urged this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of the Courts below and of the view that there is no force and merit in the submissions of Mr. Malwai, for, appellant/defendant No.1 had not set up any counter claim for challenging the aforementioned sale deed, much less gift deed executed by him in favour of Nirbhai Singh. All the three documents revealed that not only 22 bighas of land was sold but electric motor also. The registered document carries a presumption of truth until and unless the same is not set aside in the competent Court of law. Both the Courts below, in my view, rightly after examining the oral and documentary evidence appreciated the same while decreeing the suit and cannot be faulted with or warrant any interference being devoid of merit.

In my view, appellant-defendant No.1 failed to lead any evidence to establish that he had share in the electric motor which was not part of the gift deed.

I do not find any illegality and perversity in the judgments and decrees of the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 16, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No