

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1)

RSA No.4057 of 2016(O&M)
Date of Order:28th August, 2018

Mohan Singh and others

..Appellants

Versus

Kirpal Singh and others

..Respondents

(2)

RSA No.4088 of 2016(O&M)

Mohan Singh and others

..Appellants

Versus

Kirpal Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Sandeep Khunger, Advocate,
for the appellants.**

ANIL KSHETARPAL, J.

By this judgment Regular Second Appeal No.4057 and 4088 of 2016 shall disposed of as the parties as well as property in dispute is common.

One suit was filed by Mohan Singh, Sohan Singh and Harpal Singh, plaintiffs-appellants in Regular Second Appeal No.4057 of 2016, challenging the validity of transfer deed executed by their father Makhan Singh (since deceased), defendant no.2, in favour of Kirpal Singh son of Mohan Singh (son). Whereas second suit was filed by Kirpal Singh in whose favour the transfer deed has been executed for grant of relief of injunction.

The suit filed by Mohan Singh, Sohan Singh and Harpal Singh

was decreed by the learned trial Court, whereas the judgment and decree passed by the learned trial court was reversed by the learned first appellate court. The suit filed by Kirpal Singh for relief of permanent injunction was also dismissed by the learned trial court, whereas the judgment passed by the learned trial court has been reversed by the learned first appellate court.

In Civil Suit No.196-I of 06.08.2012, Kirpal Singh has been shown as son of Mohan Singh, which is incorrect. Kirpal Singh is son of Makhan Singh.

Makhan Singh son of Suja Singh was having 6 sons and 5 daughters apart from a wife. One of the son, namely, Lal Singh had died before the institution of the suit. Makhan Singh transferred 15 kanals and 13 marlas of land comprised in Khewat No.404 in favour of Kirpal Singh, his son, which was challenged by the 3 sons noticed above, the appellants in the Regular Second Appeal No.4057 of 2016 on the ground that the aforesaid transfer deed is illegal, null and void and not binding on the rights of the plaintiffs as the property was Joint Hindu Family property and some property was acquired by Makhan Singh during his life time but from the joint funds.

The suit for declaration was contested by all the defendants. A separate written statement was filed by defendant no.1 claiming that he is owner pursuant to the transfer deed dated 10.02.2009, whereas another joint written statement by defendant nos. 3 to 8 and 10 claiming that plaintiffs have no right to file the suit.

Learned trial court decreed the suit on certain admission made by Kirpal Singh during his cross-examination (oral evidence) as also on the ground that the payment of sale consideration has not been proved.

However, learned first appellate court after re-appreciating the evidence available on the file reversed the judgment passed by the learned trial court.

This court has carefully read the transfer deed Ex.P/3 dated 10.02.2009, admittedly, executed by Makhan Singh in favour of his son Kirpal Singh as produced by counsel for the appellants. It is apparent from the reading of the aforesaid transfer deed that it was executed by the father in favour of his son out of love and affection and the amount which has been referred to was only depicting the value of the property. It is specifically mentioned in the transfer deed that this property has not been transferred on payment of the consideration amount. The transfer deed is duly thumb marked by Makhan Singh. Transfer deed is registered and photographs of the transferor along with the Sub-Registrar and photographs of the witnesses have been printed on the reverse of the first page. Makhan Singh, admittedly had appeared before the Sub-Registrar and admitted the execution of the transfer deed. Makhan Singh when filed a written statement denied the transfer of land although, admitted the execution of the transfer deed. He pleaded that he never intended to transfer the property in favour of defendant no.1 Kirpal Singh exclusively.

Learned first appellate court correctly held that certain vague and confused admissions made by Kirpal Singh in cross-examination cannot be used to set aside the registered transfer deed. The learned first appellate court held that the plaintiffs have failed to prove property as Joint Hindu Family ancestral property. Plaintiffs relied upon jamabandi for the year 1978-79 wherein their grand father Suja Singh was shown in the column of ownership from whom Makhan Singh is shown to have inherited the property. However, at the same time there is an entry showing mutation

No.1154 vide which the land owned by Sulakhan Singh is shown to have been purchased by Makhan Singh. This fact has been admitted by Gurbachan Singh while appearing as PW3 that one acre of land was purchased by Makhan Singh from father of this witness, namely, Sulakhan Singh. The court further noticed that no evidence has been produced to prove that one acre of land which was purchased by Makhan Singh was out of Joint Hindu Family funds or the said land is not part of the suit land. The court further noticed that the plaintiffs have led no evidence to prove that some of the land which was inherited by Makhan Singh from his father Suja Singh, was inherited by Suja Singh from his father Sadhu Singh. Still further, plaintiffs failed to led any evidence to prove that any coparcenary existed between the family members.

Execution of transfer deed has been proved from the statement of Lachman Singh, the attesting witness, who has been examined by the plaintiffs themselves.

Learned counsel for the appellant, although, tried to take the benefit of inadvertent mistake in the transfer deed, while referring the son as Gurmej Singh but it is admitted that Makhan Singh was not having a son with the name Gurmej Singh. On careful examination of the transfer deed, it is apparent that the transfer of the land was in favour of Kirpal Singh, defendant no.1. Both the marginal witnesses of the transfer deed, namely, Lachman Singh who has been examined by the plaintiffs and Gurinder Singh who has been examined by the defendants have admitted to have attested the transfer deed. It is not the case of the plaintiffs-appellants that the transfer deed was not executed by Makhan Singh.

In view thereof, there is no ground to interfere with the findings

of fact arrived at by the learned first appellate court while reversing the judgment passed by the learned trial court.

Both the regular second appeals are dismissed.

28th August, 2018
nt

(ANIL KSHETARPAL)
JUDGE

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