IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1) **RSA No.3758 of 2015**
Date of Decision: 10.09.2018

Satnam Singh

...Appellant/Counter-Claimant

Vs.

Ram Parkash

...Respondent/plaintiff

2) **RSA No.4428 of 2015**

Satnam Singh

...Appellant/Counter-Claimant

Vs.

Ram Parkash

...Respondent/plaintiff

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Ms. Natasha Munjal, Advocate
for the appellant.

Amol Rattan Singh, J.

These two appeals arise out of the same suit filed by the respondent-plaintiff, seeking a declaration that he is the owner in possession of land measuring 8 kanals, falling in *khewat* no.516, *khatauni* no.1116 and *khasra* no.140M/12 (8-0), situated in the area of village Mallanwala Shamali, Tehsil Zira, as per the jamabandi for the year 2001-02, such claim being based on a registered sale deed dated 09.01.2001, registered before the Sub Registrar, Zira.

The plaintiff further sought that the name of the appellant-defendant be deleted from column no.3, (i.e. the column showing the person cultivating the land), in the *jamabandies* (record of rights) as also of the *khasra girdawaris* (annual records) and for a correction in the said revenue record. Further consequential relief of permanent injunction restraining the appellant-defendant from forcibly dispossessing the plaintiff from the suit land, was also sought.

2. The appellant, while filing his written statement also filed a counter claim seeking a declaration that the said sale deed (which the appellant stated was actually a document obtained by fraud/ was a forged document) be declared to be illegal, null and void, with him also seeking the consequential relief of permanent injunction against the respondent-plaintiff.

In his written statement, the appellant took a plea that in fact the plaintiff and his sons were cloth merchants and were also in the business of money lending and he (the appellant) had borrowed a sum of ₹85,000/- from the plaintiff on 18.11.1998, which he had duly returned on 21.01.2000 and had also obtained a receipt thereof from the plaintiff.

It was further contended that the son of the plaintiff had also filed a suit seeking specific performance of an agreement of sale dated 04.09.1997 against the appellant and other persons, qua land measuring 8 kanals, bearing *khasra* no.140M/1(8-0), situated in the area of village Mallanwala, Tehsil Zira.

The said suit is stated to have been dismissed on 05.02.2010, with the appeal filed thereafter by the respondent's son also dismissed on 05.04.2011.

3. Upon the aforesaid contentions as raised in the pleadings, the following issues were framed by the trial Court:-

"1. Whether the plaintiff is entitled for declaration as prayed for? OPP

2. Whether the plaintiff is entitled to the consequential relief of permanent injunction as prayed for? OPP

3. Whether the suit of (*sic*) the plaintiff has no cause of action to file the suit? OPD

4. Whether the suit is not properly valued for the purpose of court fee? OPD

5. Whether the suit of the plaintiff is not maintainable in the present form? OPD

6. Relief."

4. The respondent-plaintiff examined 10 witnesses including, amongst others, himself, the deed writer of the sale deed and 3 revenue officials, whereas the appellant-defendant examined 7 witnesses including himself, a clerk in the office of Shri G. S. Sodhi, Advocate, a police constable and another clerk, in the election office at Zira.

Both parties also relied upon documentary evidence.

5. The learned trial Court (Additional Civil Judge (Senior Division), Zira), after appraising the evidence and considering the arguments made before it, held that the sale deed dated 09.01.2001 (Ex.P6 before that Court) could not be said to be a forged or fabricated document, in view of the fact that the son of one of the attesting witnesses (who had died) identified the photograph of his father on the sale deed, as also his signatures, with the other attesting witness also having identified his signatures on the document, further deposing that Ramesh Kumar (PW-5) had appeared before the Registrar on behalf of the vendee (respondent-plaintiff) and that Harjinder Singh (PW-6) and the other witnesses, Rafi, Nambardar, as also the appellant and Ramesh Kumar had signed on the deed, with the scribe also having made

an entry in his register. He further testified that the appellant had also signed in the register, with the sale deed read over to the appellant before the Sub Registrar. The photographs and signatures of all the persons, as were seen on the document, were also identified by PW-6.

This witness further deposed that an amount of Rs.1,80,000/- was handed over by PW-5, Ramesh Kumar, to the appellant, in the presence of the Sub Registrar as also in the presence of both the attesting / marginal witnesses to the sale deed.

6. Similarly, it was recorded by the trial Court that PW-2, i.e. Subhash Chander, document writer, also proved the sale deed as also the entry with regard thereto made in his register, with PW-7 being the registration Clerk who further proved the document from the official record.

This witness also brought on record a photo copy of an affidavit executed by the appellant, which though 'marked' as PW7/B, his signatures over the same were however proved as Ex.PW7/C. This affidavit was also found by the trial Court to be stating that the land was not being sold by way of any illegal means or by fraud.

Essentially on the aforesaid evidence, the sale deed was found by the trial Court to be duly executed in the presence of the appellant.

7. A contention having been raised with regard to non-entry of the transfer of the land (vide a sale deed) in the mutation register, i.e. the revenue record, it was found by the trial Court as per PW-8, Bohar Singh, Kanungo, mutation no.8078 had been lost in the record of the Collector, though a report had been made, by which it was recommended that a mutation be entered in the record of rights (*jamabandi*).

To similar effect was the testimony of the Patwari, PW-7, Malook

Singh, who also identified the signatures of the Tehsildar on the application seeking a mutation to be made.

However, the mutation entry in the record of the Collector no.8078 (known as *parat sarkar)* was found to be duly sanctioned and entered on the basis of the registered sale deed in respect of the suit land.

8. An objection had also been raised by counsel for the appellant-defendant to the effect that the suit was not maintainable in terms of the proviso to Section 34 of the Specific Relief Act 1963. That contention was rejected by the trial Court, holding that the relief of possession as owner of the land in dispute had been sought by the plaintiff as an alternative relief, with the plaintiff admitting that possession over the suit land continued to be shown in the revenue record to be in the name of the appellant-defendant and therefore, the conditions stipulated in the proviso to Section 34, was duly met with and the suit was therefore maintainable.

9. As regards the counter claim of the appellant-defendant seeking that the sale deed be declared to be null and void, other than the fact that on merits it had been found that the sale deed was duly executed in favour of the plaintiff by the appellant, the counter claim was also rejected on the ground of limitation, with the trial Court holding that the sale deed being a registered document (dated 09.01.2001), the limitation to file a suit seeking such declaration was 3 years, with the counter claim having been made only after the institution of the suit on 11.11.2005, it was also beyond the prescribed period in terms of Article 58 of the Schedule to the Limitation Act, the appellant deemed to be having knowledge of such a registered document. (It is to be noticed that here that in any case, the appellant was found to have executed the sale deed himself).

10. As regards the evidence led by the appellant-defendant, it is seen from the judgments of the learned Courts below that the appellant had examined as DW1, Nirmaljit Singh (a Clerk to Shri Gurnam Singh Sodhi, Advocate), to prove the suit earlier filed by the son of the plaintiff (Ex.D1) seeking specific performance of the agreement of sale dated 26.052005.

[It is to be noticed that though in paragraph 4 of the judgment of the trial Court the agreement of sale is shown to be dated 04.08.1997, in paragraph 23 thereof the date is shown as 26.05.2005. However, one of the two dates is obviously a typographical error, which eventually would make no difference, as would be seen, the principal issue in the suit being the validity of the sale deed dated 09.01.2001, which was found to be proved by the Courts below].

He also examined Constable Karam Singh as DW2, to prove a certified copy of an FIR registered on 05.05.2010 against the petitioner and others alleging therein the commission of offences punishable under Sections 420/465/468/471/120-B IPC.

DW3 examined by the petitioner was one Malkiat Singh, who proved a copy of a receipt dated 21.01.2000 which had been attached with the case filed summoned by the trial Court, titled as Rajesh v. Satnam Singh, the said Malkiat Singh being a marginal witness to the receipt.

DW5 was one Bhag Singh, a Clerk in the Election Office, Zira, who testified and proved a copy of the vosters' list for village Mallanwala, for the year 2009, as per which the petitioner herein and members of his family were shown to be registered voters of that village.

The next witness, DW6, was Harvinder Singh, a Clerk in the office of Shri Sher Singh, Advocate, who proved a certified copy of a plaint titled as Ram Parkash v. Shiv Kumar, dated 15.06.2011, with DW7 being one Harjit Singh, who deposed with regard to possession of the appellant-defendant over the suit land.

Documentary evidence in support of which the witnesses had testified, for the appellant, were also referred to by the trial Court, which however, still came to the conclusion that the sale deed itself, on the basis of which the respondent-plaintiff had sought a declaration of title, stood duly proved.

11. Thus the principal issues were held in favour of the respondent-plaintiff, with issues no.3 & 5 on maintainability of the suit and lack of cause of action also decided in his favour in view of the main finding. The issue on improper court fee was found to be not pressed and was also therefore accordingly decided in favour of the respondent-plaintiff.

Consequently, the suit was decreed in his favour vide the judgment and decree dated 11.05.2012.

12. The appellant herein filed two appeals before the learned Ist appellate Court, one against the decreeing of the suit in favour of the plaintiff and the other against dismissal of his counter claim. The learned Additional District Judge, Ferozepur, dismissed both the appeals essentially on the same grounds, on the basis of evidence led by the respondent herein as regards the genuineness of the sale deed, with that Court also recording that the counter claim of the appellant seeking that he be declared to be owner in possession of suit land, was actually filed simply as a counter blast to the suit and further, that the claim of the respondent-plaintiff being based on his title to the suit land by virtue of a sale deed in his favour, there is no period of limitation within which the suit could be filed.

However, as regards the issue of inadequate court fee, though the learned trial Court had recorded a finding that the said issue was not pressed by counsel for the defendant, it was held by the lower appellate Court that court fee, *ad valorem*, was required to be affixed by the plaintiff, he having sought a decree of possession of the suit land as an alternative relief (with such decree granted to him). That issue was therefore actually decided in favour of the present appellant-defendant; however, seeing that the appellant had also not affixed reasonable court fee on either of his appeals, while dismissing the appeals, the decree passed by the trial Court was modified by the appellate court to that effect (while holding otherwise that there was no ground to interfere in the judgment and decree passed by the lower Court).

Consequently, both the appeals were dismissed, further directing recovery of Court fee of Rs.8150/- from the appellant-defendant, in each appeal before that Court.

13. Before this Court, Ms. Natasha Munjal, learned counsel appearing for the appellant, first submitted that the respondent-plaintiff was carrying on the business of moneylending and the appellant used to borrow money from him and for that purpose, would append his signatures on documents, with such documents having been misused, thereby creating a false and fabricated sale deed with the purpose of grabbing the suit land.

It was also submitted that the respondent and his son are chronic litigants, with earlier also the son of the respondent having filed a suit for specific performance against the appellant on the basis of an agreement of sale dated 04.08.1997, with the said suit dismissed on 05.02.2010 and the appeal against that judgment also dismissed.

She further submitted that the suit of the respondent-plaintiff was filed beyond limitation in terms of Article 58 of the Schedule to the Limitation Act, because it was to be filed within a period of 3 years from the date of execution of the sale deed dated 09.01.2001 set up by the respondent in his favour, whereas it was filed on 11.11.2005, the sale deed thus being of a date 4 years and 10 months prior thereto.

She further submitted that this would especially hold true as the counter claim of the appellant was dismissed also on the ground of limitation.

14. She next submitted that the respondent had failed to prove due execution of the aforesaid sale deed and that the learned Courts below have lost sight of the fact that PW5, Ramesh Kumar, son of the respondent, had in fact testified that an amount of Rs.1,80,000/- was paid by him on behalf of his father to the present appellant-defendant with him also admitting that he was living separately from his father.

15. She next submitted that the respondent was a Sub-Divisional Officer in the Punjab State Electricity Board and he was therefore required to take permission from his department to purchase any immovable property, which he had not taken, and therefore payment of consideration by PW5 on behalf of his father, clearly showed that it was a *benami* transaction barred by law.

Ms. Munjal next submitted that the respondent not having claimed the relief of possession as a consequential relief of a declaration in his favour, a suit simply seeking such a declaration, without possession of the suit land, was not maintainable.

16. Lastly, she submitted that with the findings of the trial Court on issue no.4, pertaining to court fee to be paid by the respondent-plaintiff having been set aside, with the plaintiff having been held liable to pay court

fee as applicable for possession of the suit land, which prayer he had made as an alternative prayer, the recovery from the appellant of court fee of Rs.8150/- in respect of his appeal against the decreeing of the plaintiffs' suit, and another Rs.8150/- in respect of the appeal filed by him against dismissal of his counter claim, are both completely unsustainable.

17. Having considered the aforesaid arguments, as regards the question of the declaration in favour of the respondent-plaintiff, that he is the owner of the suit land on the basis of the sale deed dated 09.01.2001, I see no reason to interfere, in this second appeal, in the concurrent finding of facts recorded by both the Courts below, to the effect that the execution of the registered sale deed stood duly proved by way of examination of one of the marginal witnesses thereto and examination of a son of the witness who had died, with an official of the office of the Registrar having also duly testified with regard to entry of the registration of the sale deed in the relevant register at Sr. no.3688.

Though there may be truth in what learned counsel for the appellant argued, that the respondent-plaintiff is actually resorting to moneylending, however, firstly, it would not be possible for this Court to hold so without strict proof of evidence led in that regard, it also having been stated by learned counsel before this Court that the respondent was at the relevant time, a Sub-Divisional Officer in the Punjab State Electricity Board.

Very possibly, his son who actually stood to testify as PW5, may have been in the business of moneylending as learned counsel has submitted before this Court, especially as earlier also a similar suit in respect of another agreement of sale filed by him (the son - PW5 Ramesh Kumar), was shown to have been dismissed; however, even so, in my opinion, the sale deed cannot be held to have been proved, by the appellant-defendant, to be a forged or fabricated one, in view of the finding of the courts below that in fact the appellant-defendant was also present before the Sub-Registrar at the time when the sale deed was executed and Rs.1,80,000/- was handed over by way of sale consideration.

Second, as regards the argument that a previous suit filed by the son of the respondent-plaintiff was dismissed, and therefore the sale deed in question cannot be held to be a validly proved sale deed, I cannot agree with that contention either, in view of the fact that whereas an agreement of sale may not have been held to have been a valid agreement (though the said judgment has not been referred to specifically by learned counsel for the appellant before this Court, even though it is said to have been duly exhibited before the Courts below), that still does not disprove a sale deed validly executed on 09.01.2001, with the surviving witness thereto having duly testified in its favour, the son of the deceased witness also having identified his fathers' photographs and signatures on the document, and yet further, with the said sale deed being a registered one, such registration also proved by a witness from the office of the Sub-Registrar, other than the scribe of the sale deed also having testified in 'its favour'.

On the contrary, the evidence led by the appellant did not in any manner refute the execution of the sale deed, other than the appellants' own oral testimony to that effect.

Hence, the arguments in that regard are rejected, with the judgments of the learned Courts below upheld.

18. Coming to the next argument of learned counsel for the appellant, to the effect that the suit of the respondent-plaintiff was filed beyond

limitation, it having been filed more than 3 years after the sale deed dated 09.01.2001 was executed, that argument is also to be rejected in view of the fact that for seeking a decree of declaration on the basis of title, with possession also sought (even by way of an alternative relief), the limitation for filing a suit is 12 years as per Article 65 of the Schedule to the Limitation Act, 1963, and that too if the defendant raises a plea of having been in possession of the suit property, adverse to the title of the plaintiff, for a period of 12 years or more.

Thus, with no plea of adverse possession having been raised in any case by the appellant-defendant, firstly recognizing the title of the respondent-plaintiff, and the respondents' suit for declaration alongwith a relief sought for possession of the suit property (as alternative relief), being based on his title to the property, such title vesting in him by virtue of the sale deed dated 09.01.2001, the question of limitation for filing the suit would not come in.

Undoubtedly, the counter claim of the appellant-defendant was dismissed by the trial court also on the ground of limitation (other than on merits), holding that the registered sale deed having been so registered on 09.01.2001, with the counter claim made by him being well beyond 3 years of that date, though the reasoning given by the trial Court is not sound in the opinion of this Court, to the effect that the appellant herein would necessarily have knowledge of a registered document, with the appellants' contention actually being that the registration of the registered document was forged document/obtained by fraud, and therefore limitation for seeking a declaration of nullity of that document would arise only from the date of knowledge of the appellant, however the document itself not having been found to be forged and in fact registered in the presence of the appellant, limitation for seeking a declaration of nullity of the said document, would of course run from the date of such registration, i.e. on 09.01.2001, in terms of Article 56 of the Schedule to the Limitation Act.

Consequently, that argument is also rejected.

19. Coming to the next argument of Ms. Munjal, that the transaction in any case would be a *benami* transaction executed by the son of the appellant-defendant, that contention is also to be rejected for 2 reasons; firstly, that no such contention is shown to be raised before the learned Courts below and therefore cannot be raised for the first time before this Court in second appeal and more importantly, simply because money consideration to the tune of Rs.1,80,000/- was handed over by the son of the respondent-plaintiff, would not make it a *benami* transaction, especially with the respondent-plaintiff admittedly being a Government employee, who if he were to enter into a *benami* transaction, it would be in the name of the son, and not in his own name with the son shown to be paying consideration money.

20. However, as regards, possibly, the respondent having entered into the transaction against norms/rules governing his service, though that plea is not specifically shown to be raised before the Court below, with nothing to that effect having been pointed out by learned counsel, even so that would be something to be looked at by the head of the department concerned in which the respondent-plaintiff was employee and for that purpose, to whom this Court can send a copy of this judgment, it being a matter of a public servant allegedly having entered into such a transaction, the implication being that he possibly did not have the money, legally, to pay such consideration.

However, no such plea actually shown to have been raised before the trial Court by the plaintiff, and no issue framed in that regard, and in any case no evidence having been led to that effect, I see no reason to entertain that argument also, which is consequently rejected. Yet, a copy of this judgment shall be sent to the Chairman of the successor to the Punjab State Electricity Board, i.e. to the Chairman of the Punjab State Power Corporation Ltd., for him/her to look into any possible purchase entered into by the respondent-plaintiff, against the rules/norms governing his service, including declaration of the source of income for purchase of the suit property, with this Court not making any comment, whatsoever, as to the correctness of the allegation, or otherwise.

21. Coming to the next argument made by learned counsel for the appellant, to the effect that the relief of possession of the suit property not having been made as a consequential relief to the declaration sought of ownership of the suit land, it is seen that as a matter of fact, by his suit, the respondent sought a declaration that he is owner in possession of the suit property on the basis of the aforementioned sale deed and for a correction of the revenue record on that basis, with a consequential relief sought, of permanent injunction restraining the appellant from interfering or forcibly dispossessing him from the suit land, with an alternative relief of possession of the suit land (as owner thereof), also sought by him.

In this Courts' opinion, though a suit seeking a declaration without seeking possession of the suit property, if the plaintiff is not in possession thereof, cannot be decreed in his favour, however, with an alternative prayer of possession also having been made, with the Courts below obviously having come to the conclusion that the plaintiff was not actually in possession thereof, the condition stipulated in the proviso to Section 34 of the Specific Relief Act, 1963, stood sufficiently negated. That is to say, with the alternative relief of possession having been sought in addition to a decree of declaration in his favour, the Court would not be barred from making a declaration to that effect.

Hence, that contention is also rejected.

22. Coming to the next argument raised by Ms. Munjal, on the issue of court fee not being recoverable from the appellant, though I do not agree with her as regards the court fee that was to be affixed by the appellant in his appeal before the trial Court, against the decreeing of the suit in favour of the respondent-plaintiff, however, as regards recovery of Rs.8100/- by way of court fee in respect of the appeal filed by him against dismissal of his counter-claim, I agree with her.

This is for the reason that actually a fee of Rs.8100/- was to be paid by the respondent-plaintiff at the time when he filed the suit, he also having sought an alternative relief of possession thereof, with eventually that relief granted to him, but rejection of his plaint not having been sought (at least not with any success), on any application filed by the appellant-defendant under Order 7 Rule 11 CPC, and eventually the trial Court having recorded a finding that the said issue on court fee was not pressed, the appellate Court correctly came to the finding that such fee should have been affixed by the respondent-plaintiff and consequently, with his suit decreed with costs, it would now be recoverable from the appellant-judgment debtor.

However, learned counsel is correct to the extent that the appellant never having sought possession of the suit land in his counter claim, he already having possession thereof, and consequently in fact a decree of possession of the suit land having been passed in favour of the respondent-decree holder, the appellant was not required to affix court fee *ad valorem* in his appeal against the dismissal of his counter claim. Therefore, recovery of another Rs.8100/- as has been held by the learned lower appellate Court, on that count, is not justified in my opinion.

Hence, that part of the judgment of the learned first appellate Court, directing recovery of Rs.8100/- as court fee in respect of the appeal filed by the present appellant against dismissal of his counter claim, is modified to the extent that court fee was payable by him only to the extent prescribed for filing a counter claim (without possession sought), and an appeal against the dismissal thereof. Thus, if any fee is found to have not been paid by him as prescribed for such an appeal, only that amount would be recoverable (as regards the appeal against the dismissal of the counter claim).

23. With the aforesaid observation, these appeals are dismissed, save to the extent that the judgment of the lower appellate Court stands modified in respect of recovery of the court fee payable by the appellant, to the extent given above.

24. Even having dismissed these appeals, however, keeping in mind what has been observed by this Court in terms of the argument raised to that effect by learned counsel for the appellant, with regard to the respondent-plaintiff being a Government servant not having taken prior permission for entering into a transaction with the appellant, i.e. the sale deed in question dated 09.01.2001, without making any comment whatsoever on that allegation, a copy of this judgment be sent to the Chairman, Punjab State Power Corporation Ltd. (predecessor-in-interest of the Punjab State Electricity Board), for him/her to look into the issue on whether such a

transaction could have been entered into by the respondent and whether it was duly entered into by following prescribed norms/rules governing the service of the respondent and if not, any action departmentally or otherwise required to be taken by the Chairman/competent authority in that regard.

This direction is being specifically given in view of the fact that the respondent is stated to have been a public servant at the time when the transaction was entered into and consequently, to try and ensure that a public officer does not dishonestly enter into any commercial transactions as are prohibited in terms of the rules governing his service, paying consideration beyond his legal sources of income, it is felt necessary by this court to do so, but again stressing that the reference to the Chairman of the Punjab State Power Corporation limited is to only by way of abundant precaution, without this Court having in any manner implicated the respondent herein, which is something to be gone into wholly on its own merit by the Chairman. However, a report shall be made by the Chairman in that regard, to this Court.

For that limited purpose, the case file be put up on 30.11.2018.

September 10, 2018 **(AMOL RATTAN SINGH)**
Gulati/D.K. **JUDGE**

1.Whether speaking/reasoned? Yes/No
2. Whether reportable? Yes/No