

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

RSA No.6294 of 2016 (O&M)

Date of Decision: October 31, 2018

Jagjit Singh

...Appellant

Versus

Janamjit Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Jagjit Singh appellant in person.

AMIT RAWAL, J.

Appellant-plaintiff has assailed the judgments and decrees of the courts below, whereby the suit for laying challenge to the sale deeds and various mutation reports, has been dismissed on the basis of the findings given on preliminary issues No.2, 3, 7, 10 and 12.

It was averred in the plaint that Raj Kumar Hazura Singh son of Raja Gurdit Singh, father of defendant No.1, was owner of the land measuring 723 bighas 10 biswas situated in Village Banwala, Tehsil Samana, District Patiala. He transferred land measuring 203 bighas 14 biswas in the name of his domestic servant Prem Singh-defendant No.2 without any consideration and mutation deed No.139 dated 17.05.1959 in this regard was effected. The said transfer was in connivance with each other by concealing the fact that it being the surplus land. Raj Kumar Hazura Singh enjoyed the possession of the surplus land which was later converted into 356 kanals as reflected in the jamabandi for the year 1960-

61. Mutation deed No.139 of 1959 was wrong, illegal, inoperative and

ineffective. Various other sale deeds were effected by Raj Kumar Hazura Singh and Prem Singh in connivance with each other as referred to in the suit. Raj Kumar Hazura Singh agreed to sell 34 kanals 5 marlas of land to deceased Amar Singh, father of the plaintiff, out of 356 kanals surplus land vide agreement to sell dated 26.11.1973 bearing Khasra No.42//2 (8-0), 24 (8-0), 54//4 (7-11), 7(8-0), 14(2-14) and comprised of Khewat/Khatouni No.35//115, 116, 117, Khasra No.42//17 (8-0), 24(8-0), 54//4/2 (5-6), 7(8-0), 14(2-14), 54///4/1(2-5), situated within the revenue estate of Village Barnala, Tehsil Patran, District Patiala after receipt of ₹ 3200/- as earnest money out of total sale price of ₹ 4700/-. Possession thereof was delivered to Amar Singh being known to each other.

Other two sale deeds of 29.08.1966 and 02.11.1962 were executed in favour of Amar Singh and Narain Singh, father of deceased Amar Singh. According to agreement, Raj Kumar Hazura Singh agreed to get the sale deed of land measuring 34 kanals 5 marlas registered on 15.06.1974, but unfortunately he expired and could not get the sale deed registered. A legal notice dated 07.06.1974 was served upon the widow of Raj Kumar Hazura Singh with regard to the agreement to sell as the plaintiff after the death of his father, has been in continuous, peaceful and uninterrupted possession.

Prem Singh fabricated two sale deeds of 12.02.1976, two of 05.03.1976 in respect of land measuring 138 kanals 13 marlas in favour of defendant No.3 and defendant Nos.10 to 12 in respect of land measuring 34 kanals 5 marlas, possession of which was already with deceased Amar Singh.

Defendants opposed the suit being not maintainable as it was

hit by provisions of Order 2 Rule 2 CPC, i.e., *res judicata* and also barred by law of limitation. On merits, it was averred that defendant No.3 Mukhtiar Singh and Mahinder Pal Singh, father of defendant Nos.6 to 9 were bonafide purchasers for valuable consideration. Predecessor of the plaintiff never challenged at any stage the transfer of the land, whereas the present suit was filed after fifty years. Status of Prem Singh being domestic servant of Raj Kumar Hazura Singh was also denied. Possession of Amar Singh on land measuring 34 kanals 5 marlas was also denied, much less construction raised thereon. The factum of agreement to sell, aforementioned, was pleaded by Amar Singh in some proceedings, but he failed to prove the possession in court proceedings, whereby decree dated 28.08.1989 was passed against him. The same was assailed by Raj Kumar Hazura Singh by filing appeal which was dismissed and this Court had also dismissed Regular Second Appeal. Another suit was filed by Mukhtiar Singh and Mahinder Pal Singh, in which also Amar Singh could not prove the agreement to sell and the suit was decreed vide judgment and decree dated 16.12.1991. First and second appeals were also dismissed and the present suit was nothing but an attempt to reopen the matter.

On the basis of the pleadings of the parties, the trial Court framed the following issues:-

- “1) Whether the transfer made by Raj Kumar Hazura Singh in favour of defendant No.2 vide Rapat No.257 dated 12.4.1959 is illegal, null and void and is liable to be set aside, as per grounds mentioned in the plaint? OPP
- 2) Whether Raj Kumar Hazura Singh executed an agreement to sell dated 26.11.1973 in favour of Amar Singh qua suit property after accepting earnest money of Rs.3200/-? OPP
- 3) Whether the sale deeds vasika No.1706 dated

12.2.1976, vasika No.1706 dated 12.2.1976, vasika No.1793 dated 5.3.1976, vasika No.1794 dated 5.3.1976, subsequent mutations No.342, 343, 344 and 345 are liable to be set aside being illegal and result of fraud? OPP

4) Whether the exchange made by defendant No.3 with Mohinder Pal Singh vide mutation No.686 dated 17.5.1988 is illegal, null and void? OPP

5) Whether the plaintiff has become owner of two kanals of land in Khasra No.54//4/2 (5-6) on the basis of adverse possession? OPP

6) Whether the plaintiff is entitled to possession of the suit property? OPP

7) Whether the judgment and decree dated 16.12.1991 passed by Sh.G.K.Rai, PCS, ACJSD, Samana, is null and void, result of fraud and is not binding upon the plaintiff? OPP

8) Whether the suit is maintainable in present form? OPP

9) Whether the suit is within limitation? OPP

10) Whether the suit is hit by provisions of order 2 rule 2 CPC? OPD

11) Whether the plaintiff is estopped from filing the suit? OPD

12) Whether the suit is hit by principles of resjudicata? OPD

13) Whether the suit is bad for non-joinder of necessary parties? OPD

14) Whether the suit is not properly valued for the purpose of court fees and jurisdiction? OPD

15) Whether defendant No.3 and Mohinder Pal Singh, father of defendants No.6 to 9 are bonafide purchasers for valuable consideration? OPD

16) Relief.”

Thereafter issues No.2, 3, 7, 10 and 12 were treated as preliminary. In support of the aforementioned pleadings, plaintiff tendered into evidence various documents Ex.P1 to Ex.P95 and defendants closed their evidence without tender of evidence.

It was made clear through zimni order that the preliminary issues were to be decided on the basis of documentary evidence. The trial Court dismissed the suit by holding that no agreement dated 26.11.1973 was ever executed and the sale deeds, referred to in issue No.3, were valid. Decree of 1991 was upheld and the suit was held to be hit by Order 2 Rule 2 CPC and as well as barred by principle of *res judicata*. Appeal laid before the Lower Appellate Court also met with the same fate.

Mr. Jagjit Singh appellant, appearing in person, who is also a lawyer by profession, submitted that the trial Court has abdicated in not giving any opportunity to lead evidence in support of the preliminary issues. The entire surplus land on the basis of the alleged documents was concealed by Raj Kumar Hazura Singh. During the pendency of the appeal before the Lower Appellate Court, an application under Order 1 Rule 10 CPC was moved for impleadment of the State, but the same remained undecided. The findings of the previous suit could not have a bearing as issues framed therein were mixed question of law and detailed evidence was required. The judgment and decree referred to in the issue had attained finality, thus, it was immaterial. Provisions of Section 11 CPC, much less Order 2 Rule 2 CPC could not have been pressed into service.

I have heard the appellant, appraised the paper book and of the view that there is no force and merit in the submissions.

In the previous judgments and decrees noticed by the courts below, Amar Singh was a party, wherein agreement to sell was purportedly could not be proved. The entire genesis and defence of the present appellant are on the same agreement. A person cannot be permitted to re-agitate the issue once the predecessor-in-interest failed to do so. Previous judgments

and decrees dated 28.08.1989 (Ex.P40 and P41) and 16.12.1991 (Ex.P66 and Ex.P67), copy of replication Ex.P59, copy of written statement Ex.P60 and copy of affidavit of Amar Singh Ex.P61 had been proved on record to establish the aforementioned fact. All the aforementioned judgments were assailed upto Hon'ble Supreme Court, but Amar Singh was not successful. Right of ownership over the land was claimed by Amar Singh, thus, the matter in issue in the previous suit directly and substantially in issue in the present case and accordingly was hit by doctrine akin to *res judicata*.

Additional relief which has been sought to be projected, could have been sought in the previous litigation and having failed to do so, cannot be pressed as being barred under Order 2 Rule 2 CPC. No explanation for challenging the Rapat of 1959 after the lapse of five decades has been given. Both the courts below being the courts of fact and law, concurrently found that the suit was hit by the provisions of law, refer to above.

No other argument has been raised before this Court to bring the case within the realm of perversity in order to form a different opinion than the one arrived at. No substantial question of law arises for determination. Resultantly, the appeal is dismissed.

October 31, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No