

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

**CM-16341-42-C of 2018 in/and  
RSA No. 171 of 2018  
Date of decision :26.10.2018**

**Swaran Singh Chahal**

**..... Appellant.**

**Versus**

**Amritpal Singh and others**

**..... Respondents**

**CORAM : HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr.H.S.Dhandi, Advocate  
for the appellant.

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**LISA GILL,J**

**CM-16341-C of 2018.**

Prayer in this application is for preponement of the date of hearing.

In view of the reasons mentioned in the application and arguments addressed, hearing of the appeal is preponed from 22.03.2019 for today itself.

Application is allowed.

**RSA no. 171 of 2018 (O&M)**

Appellant-plaintiff is aggrieved of judgment and decree dated 29.08.2014, passed by the learned Additional Civil Judge (Sr. Division), Jagraon, as well as judgment and decree dated 29.03.2017,

passed by the learned Additional District Judge, Ludhiana. Suit filed by the appellant-plaintiff seeking declaration to the effect that he is owner in possession of the land as detailed in the plaint, was dismissed by the learned trial Court. Appeal preferred by him was also dismissed by the learned First Appellate Court.

Brief facts necessary for the adjudication of the case are that plaintiff-Ghumand Singh was stated to be a person of unsound mind. Suit for declaration was filed by Ghumand Singh through Jangir Singh @ Jagir Singh, his real brother claiming to be the next friend of Ghumand Singh and further through Abjinder Singh, general power of attorney holder of Jagir Singh. Appeal before the learned Additional District Judge and the present appeal has been filed by Swaran Singh son of late Jangir Singh @ Jagir Singh through a power of attorney holder-Gurraj Singh Virk. It was pleaded that in the month of March 1997 Jagir Singh came to know through his friend Abjinder Singh that defendants-respondents no.1 and 2 namely Amritpal Singh and Jagmel Singh sons of Gurbachan Singh, were claiming themselves to be the owners of the part of the suit land (as detailed in part 'A' of the head note of the plaint) and defendant-respondent no.3-Surjit Singh was claiming to be the owner of the suit land as detailed in part 'B' of the head note of the plaint. Abjinder Singh on request of Jagir Singh inquired into the matter and it transpired that the defendants had got the said land mutated in their favour on the basis of sale deeds dated 15.03.1996 and 14.06.1996 for a consideration of ₹4,72,500/- and ₹90,000/- respectively. Abjinder Singh approached the plaintiff-Ghumand Singh and made inquiries regarding the said

transactions, but the plaintiff expressed his ignorance about the same. It was pleaded that the plaintiff was of complete unsound mind for the last three years prior to the filing of the suit and he never enjoyed any period of sanity in this while. Therefore, he was incapable of understanding the impugned transactions. Defendants no.1 and 2 are the sons of Gurbachan Singh, real brother of Ghumand Singh and Jagir Singh took undue and unfair advantage of the plaintiff being of unsound mind. He was brought to the Tehsil Complex by them and his signatures were obtained on the sale deed dated 14.06.1996. Both the said sale deeds were stated to be a result of active connivance of defendants no.1 and 2 besides Gurbachan Singh and the marginal witnesses. No consideration charged hands. Therefore, the said sale deeds should be declared illegal, null, void and ineffective qua the rights of the plaintiff. Plaintiff was claimed to be in continuous possession of the suit land. Defendants refused to admit the plaintiff's claim. Hence the suit was filed.

Suit was resisted by the defendants. Separate written statements were filed. Defendants no.1 and 2 filed a joint written statement taking various preliminary objections. Averments on merits were controverted. It was denied that the plaintiff was not in sound disposing mind at the time of executing of the sale deeds or at the time of filing of the suit. Competency of Jagir Singh to proceed with the suit on behalf of plaintiff-Ghumand Singh, as his next friend was contested. It was stated that no request had been made to the Court for holding an inquiry under Order 32 Rule 15 CPC for declaring Ghumand Singh of unsound mind neither he had ever been declared mentally unsound by

any competent medical authority. Abjinder Singh, it was pleaded was not competent to file the present suit being the power of attorney holder of Jagir Singh. At best, he would be entitled to deal with the matters pertaining to Jagir Singh and his property, but not with the property owned by Ghumand Singh.

It was specifically pleaded that Abjinder Singh was fully aware of the fact that the plaintiff was in sound disposing condition as he was a marginal witness of the agreement to sell dated 20.06.1995 executed by Ghumand Singh in respect of the suit land in favour of Gurnam Singh. After the death of Ghumand Singh, Gurnam Singh filed a suit for specific performance of the agreement to sell dated 20.06.1995 against defendants no.1, 2 as well as Jagir Singh, but during the pendency of the suit as well as the present suit, Abjinder Singh at the instance of Jagir Singh allured defendants no.1 and 2 and their father-Gurbachan Singh (defendant no.4) to effect a compromise in the suit titled as 'Gurnam Singh Vs. Jagir Singh and others'. The matter was settled for a sum of ₹8,00,000/- vide compromise deed dated 20.02.2004, which was paid by defendants no.1 and 2 to Abjinder Singh for the settlement with Gurnam Singh. Defendant no.4, agreed not to recover ₹18,000/- Canadian dollars owed by Swaran Singh to Jagir Singh. Gurnam Singh further agreed to withdraw the said suit and Jagir Singh agreed to withdraw the present suit through his power of attorney holder-Abjinder Singh. Gurnam Singh withdrew his suit on 21.02.2004 through his counsel. Abjinder Singh, attorney holder of Jagir Singh also moved an application for withdrawal of the present suit. But, once the suit was withdrawn by

Gurnam Singh, Jagir Singh turned dishonest and only with a view to extract more money from defendants no.1 and 2, he filed an application to continue with the proceedings of the present case. It was pleaded that Ghumand Singh had rightly executed the sale deeds. Possession of the land was delivered after receipt of valid consideration. Defendants no.1 and 2 pleaded that on the basis of the sale deed dated 15.03.1996, they became joint owners in possession of the suit land.

Defendant no.3, did not file any written statement despite opportunities. He was thereafter proceeded against *ex parte*.

Defendant no.4-Gurbachan Singh, in his separate written statement resisted the suit. Dismissal of the suit was prayed for by the said defendants.

Replications were filed. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to relief of declaration as prayed for?OPP
2. Whether plaintiff is entitled to alternative relief of suit for possession as prayed for?OPP
3. Whether suit of the plaintiff is not maintainable?OPD
4. Whether plaintiff has got no locus standi to file the present suit?OPD
5. Whether suit of plaintiff has not been properly valued for the purpose of court fee and jurisdiction?OPD
6. Whether plaintiff is estopped by his act and conduct from filing the present suit?OPD
7. Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of necessary parties?OPD
8. Relief.

Both the parties led evidence in support of their respective claims.

Learned trial Court on considering the facts and

circumstances of the case concluded that it was not proved on record that the plaintiff-Ghumand Singh was of unsound mind. Learned trial Court observed that Ghumand Singh was never produced before the Court, neither any request was addressed by Jagir Singh for holding an inquiry in respect to the mental status of Ghumand Singh. Sale deeds dated 15.03.1996 and 14.06.1996, it was concluded were not proved to be the result of any undue influence or fraud etc. Therefore, suit filed by the plaintiff was dismissed.

Appeal filed by the appellant was also dismissed by the learned Additional District Judge, Ludhiana, vide judgement and decree dated 29.03.2017.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that both the learned Courts below have grossly erred in dismissing the suit filed by the appellant-plaintiff. It is argued that it was incumbent upon the learned trial Court to have conducted an inquiry regarding the appellant being of unsound mind. Without the said inquiry being conducted, learned trial Court has erred in concluding that there is nothing on record to indicate that the appellant (since deceased) was of unsound mind, therefore, an adverse inference should necessarily be drawn against him. He relies upon the judgement of this Court in **Sunil Sardana Vs. Renu Rawal, 2008 (2) Civil Court Cases 179.**

Furthermore, evidence of PW-7-Vaid Jeet Singh, it is submitted has been wrongly ignored. The appellant had taken medication from him for his problem. Moreover, there is no evidence on record to

reflect that any consideration had changed hands at the time of execution of the sale deeds. Thus, on this ground alone, both the sale deeds are required to be set aside. Learned counsel for the appellant vehemently argues that Gurbachan Singh did not step into the witness box. It is thus prayed that the present appeal be allowed and suit filed by the appellant-plaintiff be decreed throughout.

I have heard learned counsel for the appellant and have gone through the photocopy of the record which is produced in Court today.

First and foremost argument raised by learned counsel for the appellant is that it was the duty of the Court to have conducted an inquiry about the plaintiff being of unsound mind or not. It would be relevant to refer to Order XXXII Rule 15 CPC at this juncture, which reads as under:-

“[15. Rules 1 to 14 (except Rule 2-A) to apply to persons of unsound mind- Rules 1 to 14 (except Rule 2-A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued.]

It is relevant to note that the suit was filed on behalf of Ghumand Singh, claimed to be of unsound mind, through his real brother Jagir Singh who claimed to be his next friend. It is not in dispute that Abjinder Singh is the son-in-law of Jagir Singh. There is indeed nothing on record to indicate that Ghumand Singh was of unsound mind.

Ghumand Singh was not produced before the Court at the time of the institution of the suit neither any request was made by Jagir Singh for holding an inquiry in respect to the mental status of Ghumand Singh. It is relevant to note that Jagir Singh moved a petition under Section 62, 63 and 67 of the Indian Lunacy Act before the learned District Judge, Ludhiana, seeking a declaration to the effect that Ghumand Singh was of unsound mind, but the same was withdrawn without assigning any reason. Certified copies of the same have been proved on record as Ex.D-21 to D-23. The factum of filing of the said petition and its withdrawal is also evident from a perusal of a certified copy of the written statement filed by Amritpal Singh in a case titled as 'Gurnam Singh Vs. Jagir Singh' (Ex.P-19). It has rightly been held by the learned trial Court that in the factual matrix of the case, it did not lie with Jagir Singh to contend that it was the duty of the Court to compel him to produce Ghumand Singh for his medical examination. Reliance on the testimony of PW-7-Vaid Jeet Singh, to prove that Ghumand Singh was of unsound mind, is clearly misplaced. It is a matter of record that PW-7-Vaid Jeet Singh is not a qualified Psychiatrist nor qualified in any manner to evaluate the mental fitness of the plaintiff. He is admittedly not a Psychiatrist, neurologist or a registered medical practitioner. Moreover, PW-7, could not bring forth any documentary evidence to show that Ghumand Singh was ever medically treated by him.

PW-8-Harbans Kaur, daughter of Jagir Singh stated that Ghumand Singh was medically examined at Kalayani Hospital, but there is no evidence on record to substantiate the same. Learned trial Court has

rightly observed that it does not appeal to logic that a person like Jagir Singh, who is educated, having a Canadian citizenship, would not get his brother medically examined from a qualified doctor especially when his brother is alleged to have lost his equilibrium suddenly. There is nothing on record to indicate that Ghumand Singh suffered from any mental infirmity except a bald averment that he became of unsound mind three years prior to the filing of the suit. There is indeed not an iota of evidence to prove this averment. There is no merit in the argument raised by learned counsel for the appellant that once the Court did not take measures to ascertain whether Ghumand Singh was of unsound mind, it could not have been concluded that Ghumand Singh was of sound disposing mind. A convoluted argument is sought to be raised that Ghumand Singh should have been presumed to be of unsound mind. Such an argument is rejected being devoid of any merit.

Additionally, the defendants examined Satinder Kumar, Senior Assistant, District Treasury Office, Ludhiana as DW-1. Documents, Ex.D-1 to D-8 relating to the pension drawn by Ghumand Singh were proved by DW-1. As per Ex.D-3, last pension was drawn by Ghumand Singh on 03.04.1998 i.e. 10 days before his death. There is nothing in the service record which proves that Ghumand Singh was not of sound disposing mind till his death in April 1998. Execution of sale deeds dated 15.03.1996 and 14.06.1996 has been duly proved. Defendant no.1-Amritpal Singh appeared as DW-10. Jatinder Kumar Gupta, deed writer, testified as DW-2 and stated that sale deed dated 15.03.1996 was scribed by him at the instance of Ghumand Singh in the presence of the

parties and the marginal witness. He stated that Ghumand Singh signed the same out of his own free will and consent, without any coercion or pressure. Entry thereof was made by him in his register at Sr. No. 315. DW-3-Karnail Singh as well as DW-4-Sadhu Singh, proved the sale deed dated 15.03.1996 (Ex.P-9). Registration of the said sale deed was duly proved.

At this juncture, it is relevant to note that execution of the said sale deeds by Ghumand Singh has not been questioned. Case set up by the plaintiff is that by taking undue advantage of the unsound mind of Ghumand Singh, the said sale deeds were got executed. However, evidence on record does not indicate that Ghumand Singh was of unsound mind at the time of execution of the sale deeds and even till his death on 13.04.1998. Similarly, registration of various FIR's against Gurbachan Singh etc., cannot prove that sale deeds in question were executed by taking undue advantage of Ghumand Singh being of unsound mind. In respect to the passing of the sale consideration, it has been rightly held by both the learned Courts below that it was only Ghumand Singh who could dispute the passing of the sale consideration. No relief can be afforded on this account alone and in view of the fact that Ghumand Singh was not proved to be of unsound mind. The said sale deeds were executed in the year 1996. Ghumand Singh passed away on 13.04.1998. In factual matrix of the case, reliance on the judgement of **Sunil Sardana's** (Supra) by learned counsel for the appellant, is of no avail to the appellant. In this view of the matter, both the learned Courts below have rightly dismissed the suit filed by the appellant-plaintiff.

Learned counsel for the appellant-plaintiff is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decree dated 29.08.2014 and 29.03.2017 passed by the learned Addl. Civil Judge (Sr. Division) Jagraon and learned Additional District Judge, Ludhiana, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

**26.10.2018**

s.khan

**(LISA GILL)  
JUDGE**

Whether speaking/reasoned : Yes/No  
Whether Reportable : Yes/No