

In the High Court of Punjab and Haryana at Chandigarh

RSA-3381 of 2018(O&M)

Date of Decision:1.6.2018

Sarup Singh

---Appellant

vs.

Rajinder Singh (now deceased) represented by his Lrs. and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.S.S.Gill, Advocate
for the appellant

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit filed by Sarup Singh and another seeking declaration and consequential relief of permanent injunction was dismissed by the trial court vide judgment and decree dated 14.9.2015, that came to be affirmed in appeal by the Additional District Judge, Kaithal.

The plaintiffs including the appellant claimed themselves to be grand sons of Gajanmal and laid challenge against sale deed No. 2545/1 dated 24.12.1981, mutation based thereon, subsequent revenue entries and agreement dated 8.2.2013 primarily on the ground that sale deed purported to be executed by Sh. Gajanmal is the result of fraud having been executed by an impostor of Sh. Gajanmal. It is averred that Rajinder Singh (since deceased) vendee under the agreement, in connivance and collusion with Deed Writer and witnesses of the sale deed by producing some impostor in place of Gajanmal manoeuvred the sale deed in question.

The courts have consistently held that the plaintiffs/appellant failed to adduce sufficient much less cogent and convincing evidence to substantiate their plea that sale deed is the result of fraud, a fact required to be proved like a criminal charge beyond shadow of reasonable doubt. Further held that self-serving statement of one of the plaintiffs is not at all sufficient to substantiate their claim that sale deed is the result of fraud practised by Rajinder Singh (since deceased) defendant No. 1 in connivance and collusion with the Deed Writer and attesting witnesses.

However, during the course of hearing, the plaintiffs sought to raise a plea beyond pleadings that as the land in question was allotted to Sh. Gajanmal in restricted auction held on 10.3.1968 and the Conveyance Deed executed on 21.12.1981 and registered on 23.12.1981 in favour of Gajanmal contained stipulation that the allottee shall not be entitled to alienate the land subject matter of the Conveyance Deed for a period of 10 years, sale by Sh. Gajanmal before expiry of the stipulated period of 10 years is against public policy and liable to be set aside.

The Courts, by relying upon the provisions of Section 10 of the Transfer of Property Act and judgments **Smt. Sarbjit Kaur and LRs of Mohinder Singh since deceased and others vs. Mohinder Singh and another 2008(4) RCR (Civil) 458** and **Bhagat Ram vs. State of Haryana (P&H) 2014(3) L.A.R. 422** have held that the plaintiffs cannot take advantage of the restrain clause.

This apart, Gajanmal or for that matter his successors-in-interest cannot be allowed to take advantage of wrong committed by Gajanmal by executing the sale deed despite there being restraint against alienation of the land in question for a period of 10 years. Even otherwise, counsel for the appellant has failed to point out any statutory provision on the basis whereof any such restriction was imposed upon Gajanmal against alienation of the land for a period

of 10 years. In this view of the matter, I do not find any reason to interfere in the concurrent findings recorded by the courts when otherwise no question of law is involved, to be adjudicated after notice to the contesting party.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(**Rekha Mittal**)
Judge

1.6.2018
paramjit

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