

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

RSA No.4038 of 2017 (O&M)

Date of Decision.23.02.2018

Balvir Kaur (deceased) through LRs

.....Appellant

Vs

Karnail Singh

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. J.S. Brar, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

C.M. No.10325-C of 2017

The application for impleading the legal representatives of Gurbax Singh (since deceased) is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

RSA No.4038 of 2017

The regular second appeal has been directed against the concurrent finding of fact whereby the suit seeking declaration of ownership qua land measuring 8 kanals being the 160/212 share out of the land bearing khasra numbers 142//6/2(4-4), 24(6-8), Khewat No.850, jamabandi for the year 2004-05 situated in the revenue estate of Village Ajitwal, Tehsil and District Moga by challenging the transfer deed bearing vasika No.7398 dated 11.11.2008, has been dismissed by the Court below and upheld by the lower Appellate Court.

It would in the fitness of things to refer pleadings emanated from the record. Balvir Kaur-plaintiff instituted the suit for declaration along with specific relief of permanent injunction on the premise that the

Kaur, who had given the land in question to her for maintenance about four years ago. Since then plaintiff was giving the land in question on contract (thekha) to his son namely Nirmal Singh continuously. Plaintiff was suffering from hypertension and depression for the last five years and was getting the treatment from Khanna Hospital & EEG Centre, Amritsar Road, Moga. In the month of November 2008, Nachhattar Singh had gone to meet his relatives and by taking advantage of his absence, defendant-Karnail Singh son of Balvir Kaur and brother of Gurbax Singh (since deceased) represented by LRs as appellant and Nirmal Singh, succeeded in getting the transfer deed dated 11.11.2008 of the land in question. One of the witnesses Karnail is alcoholic and paid numberdar. It was alleged that the aforementioned Transfer Deed had been got executed from Balvir Kaur on account of fraud and misrepresentation.

The aforementioned suit was contested by taking all usual preliminary objections. On merits, it was stated that Balvir Kaur on account of her volition and free will executed the Transfer Deed in the presence of witnesses, therefore, there was no coercion, pressure or undue influence played upon her. It was stated that actually Nirmal Singh was a manipulator who intended to grab the property.

The trial Court on the basis of the pleadings, framed the following issues:-

“1) Whether the plaintiff is owner in possession of the suit land? OPP

2) Whether the alleged transfer deed dated 11.11.2008 allegedly executed by plaintiff in favour of the defendant is illegal, null and void? OPP

3) *Whether the plaintiff is entitled for the declaration as prayed for? OPP*

4) *Whetehr the plaintiff is entitled for permanent injunction as prayed for? OPP*

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

6) *Whether suit of the plaintiff is not properly valued for the purpose of court fee and jurisdiction? OPD*

7) *Whether the suit is bad for non-joinder and misjoinder of necessary parties? OPD*

8) *Whether the plaintiff has got no locus standito file the present suit? OPD*

Relief.

The plaintiff in support of his case, examined PW1 Charan Singh, PW2 Gurmeet Singh, Numberdar, PW3 Amarjit Singh and himself stepped into witness box as PW4, tendered copy of jamabandi for the year 2004-2005 and closed the evidence. The defendant examined himself as DW1, DW2 Ved Bhushan Bansal, Document Writer and closed the evidence.

The trial Court on the preponderance of evidence dismissed the suit, which was assailed before the lower Appellate Court but the plaintiff remained unsuccessful, hence second appeal.

Mr. Brar, learned counsel appearing on behalf of the appellant submitted that on execution of the aforementioned transfer deed, suit was filed on 7.4.2009 but unfortunately during the pendency of the suit, she died on 16.11.2010 and her legal representatives were brought on record i.e.

sons, Gurbax Singh and Nirmal Singh.

In view of the provisions of Order 6 Rule 4 of the Code of Civil Procedure i.e. to prove fraud, the appellant examined Amarjit Singh as PW3, who submitted affidavit dated 22.1.2015 stating that one of the witnesses, Karnail Singh was under the influence of liquor and Balvir Kaur was not in the state of mind to execute the document. In fact, she had gone in the office of Tehsildar for execution of the document in favour of all her three sons. But in the cross examination conducted on 5.2.2015, he volte-face and deposed against the plaintiff. The other witness, Karnail Singh was himself under the influence of liquor, thus, there was sufficient material on record for the trial Court to form an opinion that fraud had been played upon Balvir Kaur but yet the suit has been dismissed.

He further submitted that during her life time, Balvir Kaur executed a registered Will dated 14.12.2009 and from the photographs appended on both the Transfer Deed and the Will, it appears that she was in good health at the time of execution of Will whereas unwell at the time of execution of the Transfer Deed. Medical record had also been brought on record but the same was ignored. All this evidence was sufficient for the Courts below to form an opinion in favour of the plaintiff, thus, there is illegality and perversity.

I have heard learned counsel for the appellant and appraised the paper book. The Transfer Deed dated 11.11.2008, Ex.D1 is a registered document, which carries presumption of truth unless and until it is rebutted through direct and cogent evidence, much less, corroborative. The best evidence which the plaintiff could have, was to examine the Registrar regarding the state of mind/health of Balvir Kaur at the time of registration

of the document. Even otherwise, no application was moved under Section 154 of the Indian Evidence Act. Amarjit Singh, witness to the Transfer Deed in cross-examination deposed against the plaintiff. In fact, he had turned hostile. Nothing prevented the plaintiff to undertake the task as per statutory provisions of law. Having failed to do so, I am of the view that the plaintiff has miserably failed to prove ingredients of Order 6 Rule 4 CPC. The plaintiff enjoined upon an obligation to support the plea of fraud taken in the plaint by cogent evidence. Since Balvir Kaur had acquired the property from her husband, who is still alive, she had become absolute owner of the same and could deal with the property in any manner as it was not a case of ancestral property. Even the father, Nachhattar Singh, who was stated to have gone out of station has not been examined to support the pleadings taken in the plaint. All these facts weighed in the mind of the Courts below to arrive at a finding against the plaintiff.

In view of the aforementioned, I do not intend to differ with the findings rendered by the Courts below as the same are based upon correct appreciation of fact and law, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 23, 2018
Pankaj*