

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

RSA No.6472 of 2017 (O&M)

Date of decision:17.04.2018

Baljit Singh and others

... Appellants

Vs.

Raghbir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. M.S.Khaira, Senior Advocate with
Mr. D.S.Randhawa, Advocate
for the appellants.

AMIT RAWAL J.

C.M.No. 16699-C of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 04 days in filing the appeal is condoned.

C.M. stands disposed of.

C.M.No. 16700-C of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 28 days in re-filing the appeal is condoned.

C.M. stands disposed of.

RSA No.6472 of 2017 (O&M)

The appellant-plaintiffs are aggrieved of the concurrent findings of facts and law, whereby, suit seeking declaration by challenging

the sale deed/transfer deed dated 24.10.2005 executed by Late Pritam Singh in favour of defendant No.1 Raghbir Singh being outcome of fraud, bogus transaction and abuse to the provisions of Govt. notification dated 05.09.2001 and claim qua possession of land measuring 24 kanals 10 marlas out of total land measuring 183 kanals 18 marlas on the basis of registered Will dated 07.05.1999 executed by deceased Pritam Singh, had been dismissed by the trial Court and upheld by the Lower Appellate Court.

The appellant-plaintiff instituted the suit on the ground that plaintiffs No.1 and 2 alongwith defendants no.1 to 4 are the sons and daughter of deceased Pritam Singh, who died on 28.04.2008 and by virtue of the Will dated 7.5.1999, the land belonging to him vested in equal share amongst all the legal heirs. The land at his hands was ancestral, therefore, he was not competent to alienate the same by way of the alleged sale and transfer, *ibid* which was not act of good management, much less without legal necessity and consideration.

The plaintiffs were in possession of land measuring 12 kanals 5 marlas being $\frac{1}{2}$ share of the land measuring 24 kanals 10 marlas on the basis of the registered Will, *ibid*, whereas plaintiffs no.3 and 4 are the grandsons of the deceased father of the plaintiffs. Plaintiff no.1 Kulwant Singh had already filed a suit for declaration against the defendants on 09.12.2005 and thereafter, the plaintiffs presumed that there was a formal defect in the suit. An application under Order 23 Rule 1 read with Section 151 CPC was moved by the plaintiffs in the previous suit which was allowed. The plaintiffs claimed $\frac{2}{3}$ rd share in the suit land. Defendant No.1 by taking the

aid of physical health of deceased Pritam Singh, got the transfer deed executed in respect of entire suit in his favour which was result of fraud and mis-representation.

The defendants appeared and filed written statement by taking preliminary objections with regard to maintainability, non-joinder, mis-joinder and locus standi. On merit, it was stated that plaintiff Kulwant Singh died in the year 2011 and therefore, could not be described as plaintiff, whereas, Baljit Singh ceased to be the attorney after the death of Kulwant Singh. Narinder Singh, defendant in the previous suit no.34 of 2005 could not be impleaded as plaintiff in the instant suit without permission of the Court nor his attorney Kulwant or Baljit Singh had any right to file the suit against defendant no.1, who was the absolute owner of the suit land. The suit land measuring 24 kanals 10 marlas formed part of joint khata comprising 183 kanals 18 marlas, whereas the suit had been filed regarding very selective portion. The pacca house covering 1 kanal 5 marlas of land belonging to Pritam Singh had not been referred to in the suit. Pritam Singh had filed a counter claim in the previous suit. Pritam Singh was adopted as son by late Kishan Singh according to the custom prevalent in the JAT Shergill Gotra of the village and after the death of Kishan Singh, Pritam Singh succeeded to his estate and after his death, defendants no.1 to 4 were allowed to be impleaded as legal representatives of Pritam Singh. The sale deed dated 24.10.2005 stated to be valid, registered and legal document to be executed by Pritam Singh in sound disposing mind and free Will. It was averred that alleged Will dated 7.5.1999 was invalid being in contravention

of Section 69(A) and 30 of Hindu Succession Act, which was revoked by the later Will dated 10.4.2001 executed by Pritam Singh in favour of the plaintiff. The sale/transfer deed dated 24.10.2005 executed by Pritam Singh in favour of defendant No.1 was with the consent of defendants no. 2 to 4 and prayed for dismissal of the suit.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiffs alongwith defendants no.1 to 4 are entitled to inherit property of deceased Pritam Singh in equal shares on the basis of Will dated 7.5.1999? OPP*
- 2. Whether the land in dispute is ancestral land? OPP*
- 3. Whether the plaintiffs are entitled to the relief of declaration?OPP*
- 4. Whether the plaintiffs are entitled to the relief of permanent injunction? OPP*
- 5. Whether the suit of the plaintiffs is within limitation? OPP*
- 6. Whether the suit of the plaintiffs is bad for mis joinder of necessary parties? OPD*
- 7. Whether the suit of the plaintiffs is not verified for the purpose of Court fees and jurisdiction? OPD*
- 8. Whether the suit of the plaintiffs is not maintainable in the present form? OPD*
- 9. Relief.”*

Plaintiffs examined Baljit Singh/plaintiff no.3 as PW1 and brought on record the following documents:-

1. Ex.PW1/A affidavit
2. Ex.P1 certified copy of Misal Hakiat for the year 1937-38
3. Ex.P1/A attested translation of the document
4. EX.P2 certified copy of the jamabandi for the year 1943-44
5. Ex.PW2/A attested translation of the jamabandi
6. Ex.P3 certified copy of misal hakait for the year 1955-56
7. Ex.P3/A attested copy of the document
8. Ex.P4 order dated 27.07.2010
9. Ex.PX original khasra girdawari for the year 2013-14
10. Ex.PY statement of Raghbir Singh

On the other hand, defendant No.1 examined himself as DW1 and brought on record the documents Ex.DW1/A, Ex.D1, Ex.D2, Ex.D3/A, Ex.D4, Ex.D6 to Ex.D21, Bhog ceremony card of Pritam Singh as Mark/XY, 12 photographs Mark A to Mark N and photostat copy of General Power of Attorney of Pritam Singh dated 01.10.1997 as Mark DX and closed the evidence.

The trial Court on the basis of aforementioned evidence and noticing the law cited at bar by the respective parties held that plaintiffs miserably failed to prove the nature and character of the property being

ancestral or any fraud and mis-representation had been played upon them and dismissed the suit, vide judgment and decree dated 19.5.2015 and appeal laid before the Lower Appellate Court also met with the same fate.

Mr. M.S.Khaira, learned Senior counsel assisted by Mr. D.S.Randhawa, learned counsel for the appellant-plaintiffs submitted that judgments and decrees of the Courts below are not sustainable in the eyes of law, for, there is no term 'transfer deed' under the Transfer of Property Act. In fact, the document did not mention about the sale or any consideration. Defendant no.1 had not only been cheated but a fraud had been played upon late Pritam Singh regarding the transfer deed dated 24.10.2005. The appellant-plaintiffs are in possession of the suit land till date, therefore, suit could not have been said to be barred by law of limitation. Pritam Singh had retired as Superintendent from the Secretariat and therefore, could not be expected to thumb mark the aforementioned document, though he died in the year 2008 after three years of execution of the document at the age of 93 years, therefore, there is illegality and perversity. The property at the hands of Pritam Singh was also ancestral.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Khaira.

For the purpose of proving fraud, provisions of Order 6 Rule 4 CPC are required to be proved. It is a matter of record that Pritam Singh remained alive for almost three years after the execution of the document but did not challenge the same. Only the grandsons, who have come forward

by filing a suit in 2010, two years after demise of Pritam Singh. The nature and character of the property to be ancestral had also not been proved on record, therefore, property at the hands of Pritam Singh had been treated as self acquired property. By treating the property to be self acquired, Pritam Singh could deal the property in any manner he wanted to, executed sale deed in favour of his son Raghbir Singh, whereas, other son and daughters, Surinder Singh and Devinder Kaur and Harjinder Kaur did not object to the same. It was only one son Kulwant Singh resident of Vancouver, Canada alongwith his wife, son and brother Narinder Singh filed a suit. The Will aforementioned has also not been proved, for, none of the witnesses to the said Will have been examined. The appellants have failed to prove the ingredients of Section 68 of Indian Evidence Act and Section 63(c) of Indian Succession Act. No discrepancy in the aforementioned document could be pointed out by the plaintiffs that it was not as per the provisions of Punjab Govt. Notification dated 05.09.2001. It is a registered document and carried a presumption of truth. If at all, it was so, Pritam Singh, who was stated to have retired as Superintendent from Secretariat would not have kept silent but rather challenged the document during his life time.

As regards injunction, the Court below found that land was still joint and had not been partitioned and declined to grant injunction as no injunction could be granted against the co-owner and co-sharer as the remedy was to go for partition.

The finding on issue no.5 with regard to suit being barred by law of limitation by bringing it under the provisions of Article 58 of the

Limitation Act is correct interpretation of law as the plaintiffs' case was not covered under Article 109 of Limitation Act, for, property at the hands of Pritam Singh had not been proved to be ancestral. Withdrawal of the previous suit would not extend the period of limitation. All these factors have been looked into and do not call for interference or fall within the realm of perversity to form the different opinion than the one arrived at by the Courts below, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

April 17, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No