

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

RSA No.661 of 2018 (O&M)

Date of decision: 01.02.2018

Darshan Lal

...Appellant

Versus

Madan Lal

...Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ivan Singh Khosa, Advocate,
for the appellant.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 07.11.2017 passed by the Additional District Judge, Karnal, dismissing an appeal filed by plaintiff-appellant against the judgment and decree dated 25.08.2014 passed by the Civil Judge (Junior Division), Karnal, whereby suit filed by plaintiff-appellant for declaration, has been dismissed.

Darshan Lal-plaintiff (appellant herein) filed a suit for declaration to the effect that he was owner in possession by way of partition qua half share in the plot/house, situated at Old G.T. Road, near Namastey Chowk, Karnal, over the land measuring 8 Biswas, detailed and described in head note of the plaint and the judgment and decree dated 13.09.1980 passed by the then Sub Judge, 3rd Class, Karnal in civil suit No.550 of 1980, titled as 'Darshan lal vs. Prem Kumari' as well as mutation No.34489 dated 20.07.2011 entered and sanctioned by the Revenue Officer, Karnal on the basis of said decree, was illegal, null & void, ineffective, inoperative and

further pleaded that the supplementary sale deed No. 4408/1 dated 14.12.1995 was an act of fraud being played by deceased-Prem Kumar in connivance with her husband i.e. defendant-respondent and was not binding upon the rights of plaintiff-appellant. As per plaintiff-appellant, defendant-respondent was his real brother and by virtue of a registered sale deed bearing Vasika No.1534/1 dated 20.06.1972 executed by Smt. Savitri Devi in favour of plaintiff and Smt. Prem Kumari (wife of defendant-Madan Lal) for a sale consideration of Rs.14,000/-, he (plaintiff) was owner of half share out of the suit property. Due to mistake in Khasra number (which was wrongly mentioned as 9095 min in the registered sale deed dated 20.06.1972), a supplementary sale deed was got executed and registered vide Vasika No.4408/1 dated 14.12.1995 by vendor-Savitri Devi in favour of plaintiff and smt. Prem Kumari, whereby khasra number was corrected as 9055/2/2 measuring 8 biswas. The supplementary sale deed was signed by the defendant as an attesting witness. It was further stated that defendant being elder brother of plaintiff, had got his (plaintiff's) signatures on some blank papers by playing fraud upon him and thereafter, obtained judgment and decree dated 13.09.1980 in respect of a plot measuring 276 Sq. yards in favour of his wife Prem Kumari. Thereafter, mutation No.34489 dated 27.07.2011 was entered and sanctioned on the basis of said judgment and decree. Hence, the suit.

Upon notice, defendant-respondent filed written statement by taking preliminary objections with regard to limitation, locus standi, cause of action, maintainability, concealment of true and material facts, estoppel etc. It was submitted that the decree in question had been passed in the presence of plaintiff-appellant. Vide sale deed dated 20.07.1972, land in

question was purchased from Smt. Savitri Devi and thereafter, mutation No.34488 was entered and sanctioned in the name of Smt. Prem Kumari to the extent of 11/16 shares i.e. land measuring 5½ Biswas out of 8 Biswas pertaining to Khasra No.9095/2/2. Thereafter, plaintiff filed a suit against Smt. Prem Kumari, whereby he had claimed ownership and possession over the property shown in red colour in the site plan attached with the plaint and the property shown in green colour was sought to be declared as ownership and possession of Prem Kumari. The plaintiff was well conversant with the said decree. As per defendant, no fraud was played upon the plaintiff as alleged. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to a decree of declaration as prayed for? OPP
2. If issue No.1 is proved, whether the plaintiff is entitled for the relief of permanent injunction as prayed for?
3. Whether the suit of the plaintiff is not maintainable in its present form? OPD
4. Whether the plaintiff has no locus-standi and cause of action to file the present suit? OPD
5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD
6. Whether the suit of the plaintiff is not properly valued for the purposes of court fee and jurisdiction? OPD
7. Whether the suit of the plaintiff is hopelessly time barred? OPD
8. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. Appeal against the said judgment also met the same fate.

Heard.

Learned counsel for the appellant does not dispute that the property, subject matter of civil suit No.550 of 1980, titled as 'Darshan Lal vs. Prem Kumari' Ex.PW1/A as per letters ABCD, is in his possession till date.

A perusal of the plaint shows that the property marked ABCD as shown in red lines in the site plan attached therewith, was consisting of three rooms, two shops, a *deohri*, stairs etc. were kept by plaintiff-appellant as per family settlement dated 15.05.1980.

Grievance of the appellant was that the property, of which he and the wife of defendant were joint owners, has been taken away by the defendant by virtue of the judgment and decree dated 13.09.1980. The appellant has never instructed Sh. D.C. Bali, Advocate, to make a statement on his behalf.

This aspect has been considered by both the Courts below by observing that the power of attorney Ex.PW1/C, executed by plaintiff, was bearing his signatures and this fact was admitted by the plaintiff himself. The same was not procured upon a blank paper. Moreover, no evidence was led by the plaintiff to show that his signatures were taken on blank papers.

Learned counsel for the appellant has referred to the judgment passed by Hon'ble the Supreme Court in **Gurpreet Singh Vs. Chatur Bhuj Goel**, (1988) 1 Supreme Court Cases 270, to contend that when a compromise is effected without writing and signing, then under Order 23 Rule 3 (as amended by CPC (Amendment) Act, 1976), it should have been reduced into writing by both the parties.

This judgment is not applicable to the facts of the present case because in the plaint itself, plaintiff-appellant has himself pleaded that a

family settlement was arrived at between the plaintiff and defendant on 15.05.1980.

Accordingly, after going through the impugned judgments, this Court is of the view that suit filed by plaintiff-appellant has been rightly dismissed by both the Courts below, as he has failed to prove his case by leading cogent and convincing evidence. No illegality, much less perversity, has been found in the impugned judgments warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

01.02.2018
ajp

(RITU BAHRI)
JUDGE

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