

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

**RSA No.5419 of 2003 (O&M)
Date of Decision:20.02.2019**

Bahadur Singh (since deceased) through his LRs

...Appellant(s)

Versus

Tej Kaur and others

...Respondent(s)

RSA No.5420 of 2003 (O&M)

Bahadur Singh (since deceased) through his LRs

...Appellant(s)

Versus

Pritam Singh and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.S.D.Sharma, Senior Advocate with
Mr.Manish Kumar Singla, Advocate and
Mr.Ved Priya Malik, Advocate for the appellant.

Mr.Ajay Pal Singh, Advocate
for respondents No.1, 2, 5 and 6 in RSA No.5419 of 2003 and
for respondents No.1, 2, 3 and 6 in RSA No.5420 of 2003

Mr.Tejinder Pal Singh, Advocate for respondent No.3
in RSA No.5419 of 2003 and for respondents No.4 and 5
in RSA No.5420 of 2003.

ANIL KSHETARPAL, J.

By this judgment RSA No.5419 and 5420 of 2013 shall stand
disposed of. Both are arising from the same suit and counter claim filed by
defendant No.5 which has been disposed of by a common judgment by the

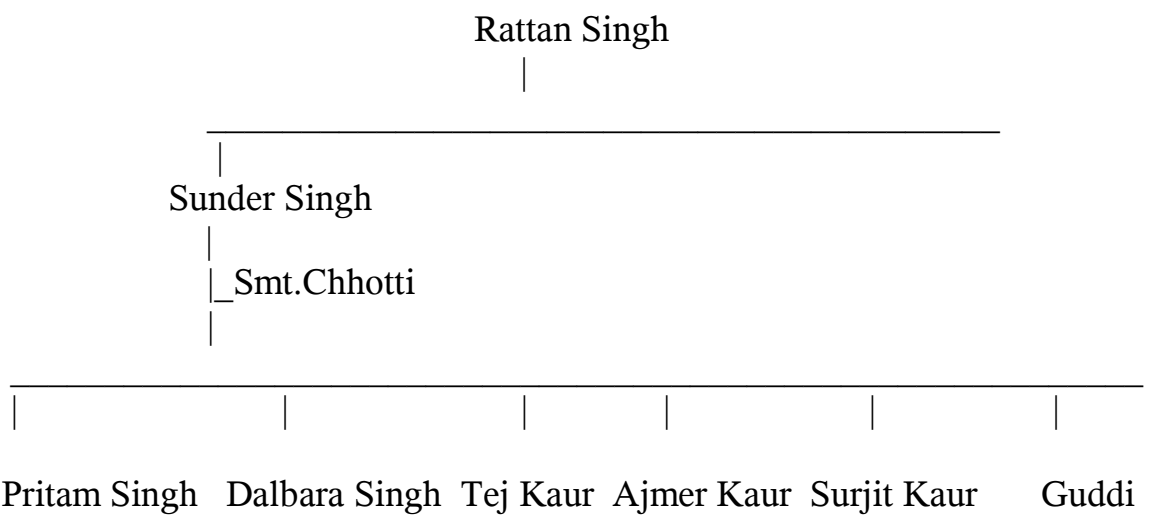
learned trial court as well as by the first appellate court.

The plaintiff is in regular second appeal against the judgment passed by the learned first appellate court reversing the judgment of the learned trial court.

In the considered view of this Court, following substantial questions of law arise for consideration:

- (i) Whether a sale can be ignored on the basis of rule of *lis pendence* particularly when it is proved that the previous litigation was result of collusion between the family members?
- (ii) Whether a registered sale deed can be set aside on the ground that payment of sale consideration has not been proved unless in the sale deed itself such condition/term is incorporated?

Some facts are required to be noticed. Sunder Singh, common ancestor of the defendants, was having two sons, four daughters apart from wife. When he died, property left behind by him was mutated in favour of all the Class I heirs. A small pedigree table shall be convenient to understand the relations between the parties:-



Dalbara Singh and Pritam Singh filed a civil suit claiming that

the property left by Sunder Singh is a joint hindu ancestral coparcenary property and, therefore, mutation of inheritance in favour of all the Class I heirs is illegal. The suit was filed on 23.9.1980. In the aforesaid suit, defendants conceded to the claim set up in the plaint by Dalbara Singh and Pritam Singh. The learned court, therefore, passed judgment and decree dated 13.2.1981. It may be noted that the judgment and decree is not part of the record, however, the plaint and the statement suffered by the defendants in the aforesaid suit is part of the record of the present suit.

After passing of the decree dated 13.2.1981, entry in the revenue record was corrected and Dalbara Singh and Pritam Singh were recorded as joint owners to equal extent.

Dalbara Singh and Pritam Singh sold the suit land to plaintiff-appellant Bahadur Singh vide registered sale deed dated 26.8.1991. However, Pritam Singh and Dalbara Singh had something else in their mind. Pritam Singh and Dalbara Singh got filed a civil suit against them from their sisters namely Tej Kaur, Ajmer Kaur, Surjeet Kaur and Smt.Guddi. In the aforesaid suit, which was instituted on 24.8.1991, the judgment and decree which has been passed with the consent of the parties on 13.2.1981 was challenged. The sale deed in favour of plaintiff-appellant is two days after the institution of the suit. In the aforesaid suit filed by the sisters, although written statement was filed, contesting the suit, however, Pritam Singh and Dalbara Singh neither chose to cross-examine the witnesses by their sisters nor they appeared in evidence nor led any evidence on their behalf. Thus, a judgment and decree came to be passed on 3.10.1994. Relevant sub-para of para 6 of the judgment dated 3.10.1994 is extracted as under:-

*The perusal of the judgment dt.13.2.81 Ex. P-1 and decree sheet Ex.P-2 shows that the present defendants No.1 and 2 filed a civil suit against the present plaintiffs in which the present plaintiffs appeared and made statements admitting their claim and the suit was decreed accordingly. However, the plaintiffs appeared and made statements admitting their claim and the suit was decreed accordingly. However, the plaintiffs have proved through their unrebutted statements PW1 and PW2 that they never appeared in the suit so decided vide judgment Ex.P.1. They only came to know about the decree when the defendants No.1 and 2 refused to pay Batai to them of the crop for Hari, 1991. **The defendants have not bothered to step into the witness box to rebut the statements of PW1 and PW2. In order words the defendants No.1 and 2 have also not led any evidence worth the name to rebut the claim of the plaintiffs.** Keeping in view of the above facts, the above statements to be believed. Otherwise it is admitted case of the parties that on death of Sunder Singh his estate was mutated in equal shares in the names of the parties but later on the defendants No.1 and 2 said to have acquired the rights of the plaintiffs on the basis of the decree dt.13.2.81. The plaintiffs have proved through their unrebutted statements as PW1 and PW2 that they have never suffered any decree as such the alleged decree is the result of fraud and misrepresentation and is liable to be set aside and the plaintiffs are entitled to the declaration and injunction as prayed against the contesting defendants.”*

The plaintiff-appellant Bahadur Singh has filed the present suit for declaration claiming that he is owner in possession of the suit land and the judgment and decree dated 3.10.1994 is result of collusion and defendants be restrained from interfering in his possession. Defendant No.5-

Pritam Singh filed a counter claim claiming that he is owner in possession

of the suit land and the sale deed executed by him along with his brother is result of fraud.

Learned trial court on appreciation of evidence decreed the suit filed by the plaintiff after recording a finding that the plaintiff is a bonafide purchaser, without notice of the pending litigation, for valuable consideration and the judgment and decree dated 3.1.1994 is result of collusion between the parties and therefore, rule of *lis pendence* would not be applicable. The counter claim filed by defendant No.5 was also dismissed by the court as defendant No.5 failed to affix appropriate court fee.

However, the learned first appellate court has chosen to reverse the judgment passed by the learned trial court while deciding two appeals one filed by four sisters named above and other filed by Pritam Singh. Learned first appellate court has recorded following reasons to set aside the judgment of the learned trial court:-

(i) Payment of sale consideration although acknowledged in the sale-deed has not been proved.

(ii) The sale-deed in favour of the plaintiff is governed by rule of *lis pendence* and there is no collusion between the defendants, who are members of one family. The court has held that the suit which was decided on 3.10.1994 was hotly contested.

(iii) Once the sale deed in favour of the plaintiff-appellant has been held to be void, therefore, counter claim even in absence of payment of **court fee is liable to be decreed.**

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

As regards findings of the first appellate court that payment of the sale consideration has not been proved by the plaintiff-appellant, the judgment passed by the learned first appellate court is clearly perverse. It is well settled that a registered sale deed normally cannot be set aside on the ground that payment of sale consideration is not proved unless there is a specific clause in the sale deed providing for such setting aside or cancellation of sale deed on non payment of consideration.

Section 55 (4)(b) of the Transfer of Property Act, 1882 (for short 'the Act of 1882) provides that the seller has right to recover the unpaid amount of sale consideration. Still further, Section 8 of the Act of 1882 provides that unless a different intention is expressed or necessarily implied a transfer of property passes forthwith on execution of the sale deed to the transferee followed by registration thereof. On completion of the sale-deed i.e. registration of the sale-deed, the title is deemed to have passed to the purchaser on the execution of the sale-deed if registration of the sale deed is later on.

In the present case, in the sale-deed which is signed by Dalbara Singh and Pritam Singh, it has been recited that the sale consideration has already been received in the village at home. This fact is acknowledged in a written contract i.e. registered sale deed executed by Pritam Singh and Dalbara Singh who have also admitted execution thereof. Normally once in the sale-deed which has been duly registered, payment of consideration has

been acknowledged the Court should not normally disbelieve such position. A sale deed cannot be set aside only on the ground that payment of sale consideration has not been proved unless there is a condition/term to this effect, laying down such term in the sale deed itself.

The second reason given by the learned first appellate court is clearly perverse. The collusion between the brothers and the sister is apparent from the reading of para 6 of the judgment dated 3.10.1994 which has been extracted above. Brothers, who were defendants in the previous suit which resulted into a judgment and decree dated 3.10.1994, neither cross-examined the witnesses who were examined on behalf of the plaintiffs nor they produced any evidence to defend the case. Looking into the *inter se* relationship between the parties, it is a clear case of collusion. Still further, the brothers namely Dalbara Singh and Pritam Singh sold the property on 26.8.1991 i.e. two days after the institution of suit by their sisters i.e. on 24.8.1991.

On careful reading of Section 52 of the Act of 1882, which is the basis of rule of *lis pendence*, it is apparent that all transfers of the property which are subject matter of a pending suit shall be subservient to the result of the suit. However, there is an exception to this Rule. Such Rule would not apply if it is established that suit or proceedings were collusive. Section 52 of the Act of 1882 is extracted as under:-

52. ***Transfer of property pending suit relating thereto.—***

During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits] by the Central Government of any suit or proceedings which is not collusive and] in which any right to immovable property is directly and

specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.”

In the present case, collusion between the brothers and sisters is apparent. The learned first appellate court clearly erred in recording that the suit has been hotly contested by the brothers. If a suit is hotly contested, counsel for the defendants would not allow a witness of the plaintiff to go without proper cross-examination and defendant would lead evidence in support of his case. In the present case, both these factors are missing.

Learned first appellate court has also committed a material irregularity in allowing the appeal filed by defendant No.5-Pritam Singh even after noticing that he has not deposited/paid the required court fee. The learned first appellate court was much impressed with the fact that since the sale deed has been declared to be void in the suit, therefore, counter claim is to be decreed. Counter claim is a separate suit and such suit cannot continue without payment of proper court fee. However, this issue should not detain this court since the sale deed in favour of the plaintiff has been

found to be a genuine transaction.

Accordingly, the questions which have been framed are answered in favour of the appellant.

Resultantly, both these appeals are allowed. The judgment and decree passed by the learned first appellate court are set aside, whereas that of the learned trial court are restored. Pending application(s), if any, shall also stand disposed of, in terms thereof.

20.02.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No