

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

RSA No. 2977 of 1988 (O&M)

Date of Decision:20.11.2019

Teka (since deceased) through his legal representative Gyano Devi d/o Teka
w/o Mohan Singh r/o Bhara Gaon, Tehsil and District Karnal.

.....Appellant

Versus

Ranjit Singh and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. APS Sandhu, Advocate
for the appellant.

Mr. C.B.Goel, Advocate
for the respondents.

LISA GILL, J.

Appellant in this case is the unsuccessful plaintiff whose suit for possession by way of redemption of agricultural land as detailed in the plaint, was dismissed by the learned Sub Judge IInd Class, Karnal, vide judgement and decree dated 23.12.1986 and appeal filed by the plaintiff was also dismissed by the learned Additional District Judge, Karnal, vide judgement and decree dated 30.07.1988.

Present appeal has been filed challenging both the said judgements and decrees.

Brief facts necessary for the adjudication of the case are that plaintiff-Teka, now represented by his legal representative, filed a suit for redemption of the suit land, with the pleadings that the plaintiff, Munshi, Panna-defendant no.11 and defendants no.12 to 16, were owners of agricultural land as detailed in the plaint. Munshi, the brother of the plaintiff

was stated to be the owner of the property to the extent of 1/4th share. Land measuring 8 Kanal being 1/4th share of the total land measuring 32 Kanals as detailed in the plaint was stated to be mortgaged with possession by Munshi with Paras Ram, father of defendants no.4 to 9 and husband of defendant no.10. Mutation no. 1440 in this respect was sanctioned on 20.07.1967. Suit land was statedly mortgaged for a sum of ₹650/-. It is stated that Munshi (since deceased) had paid the mortgage amount, but mutation of redemption was not sanctioned and the suit land continued to be reflected to be under mortgage with Paras Ram in the revenue records. Plaintiff claimed to have been declared the owner of the suit land vide a Civil Court decree dated 15.09.1982, wherein Munshi admitted the transfer of the suit land in favour of plaintiff-Teka by way of a family settlement. It is further pleaded that defendants no.1 to 3 merely with a view to defeat the right of redemption of the plaintiff took possession of the suit land in collusion with defendants no.4 to 10. Plaintiff claimed to be entitled to possession by way of redemption of the suit land including the actual possession of Rect. no. 27 Khasra No. 2 (8-0) on payment of ₹650/-. As the defendants did not accede to his request, the suit was filed.

Suit was contested by defendants no.1 to 3 only. The said defendants raised various preliminary objections. It is stated that the plaintiff did not come to Court with clean hands, as he had concealed the facts pertaining to suit land being purchased by the defendants from Munshi, by way of a registered sale deed dated 01.07.1983. It is further stated that the plaintiff was very much aware of the defendants having purchased the suit property for a consideration of ₹32,000/-. The said defendants claimed to be

bona fide purchasers of the property for consideration having made proper inquiries about the title of the property, wherein Munshi is duly reflected to be the owner of the suit property. The plaintiff, it is alleged played a key role in the sale of the property by Munshi in favour of the said defendants. Possession of the suit property was duly handed over to them on execution of the sale deed. Dismissal of the suit was prayed for.

Defendants no.11, 14 to 16 filed a written statement admitting the claim of the plaintiff in *toto*.

Defendants no.12 and 13 were given up by the plaintiff and defendants no.4 to 10 were proceeded *ex parte* vide orders dated 13.09.1985 and 11.10.1985.

Replication was filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is the owner of the land in suit as alleged in para no.2 of the plaint?OPP
2. Whether the land in suit is under mortgage with defendants no.4 to 10 if so to what amount and to what effect?OPP
3. Whether the defendants no.1 to 3 are the owners of land in suit as alleged in para no.3 of the written statement (preliminary objection and para no.2 of the written statement (on merits), if so, to what effect?OPD
4. If issue no.3, is proved whether the alleged sale by Munshi in favour of defendants no.1 to 3 is binding on the plaintiff?OPD
5. Whether the suit is not maintainable?OPD
6. Whether the plaintiff has no locus standi to file and to maintain the suit?OPD
7. Whether the Civil Court has no jurisdiction to try or entertain the present suit?OPD
8. Whether the suit is not properly valued as alleged?OPD
9. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances of the case and evidence on record, dismissed the suit filed by the plaintiff while observing that the purported transfer of the property in question by way of decree dated 15.09.1982, was not registered and a perusal of the plaint of the said suit revealed that the property in question is stated to be gifted by Munshi to Teka. Moreover, even the mutation in respect to this decree was not entered/sanctioned immediately after the execution of the sale deed dated 01.07.1983. It is observed that passing of the decree dated 15.09.1982 was a clandestine affair between the plaintiff and Munshi till the sanctioning of the mutation on 23.07.1983, i.e., after execution of the sale deed on 01.07.1983. It is further observed that the plaintiff was found to be present at the time when the land in question was agreed to be sold to the defendants by Munshi. Reference was made to the statement of DW-2-Panna Ram, brother of the plaintiff and Munshi. The sale deed in favour of defendants no.1 to 3, was upheld.

Appeal preferred by the plaintiff was dismissed by the learned Additional District Judge, Karnal, vide impugned judgement and decree dated 30.07.1988.

Aggrieved therefrom, present appeal has been filed by the appellant-plaintiff.

Learned counsel for the appellant-plaintiff vehemently argues that both the learned Courts below have grossly erred in law and on fact in dismissing the suit filed by the plaintiff. It is contended that a family settlement does not require any registration and admittedly Munshi and the plaintiff are real brothers. Therefore, both the learned Courts below have grossly erred in holding that decree dated 15.09.1982 is null and void on the

ground that the same is not registered. Therefore, the finding that decree dated 15.09.1982, is a nullity, is not justified. The said decree, it is submitted has to be afforded the sanctity it deserves, especially in the wake of the fact that the said decree has not been challenged by any affected person.

Learned counsel for the appellant argues that defendants no.1 to 3, are strangers to the decree and have no right to question the same. It is further contended that the sale deed dated 01.07.1983 in favour of defendants no.1 to 3, in any case, cannot confer any title upon the said defendants for the simple reason that the vendor-Munshi himself had no title over the suit property after passing of decree dated 15.09.1982 in favour of the plaintiff. Therefore, there is no question of defendants no.1 to 3, being *bona fide* purchasers for consideration. Learned counsel for the appellant further submits that defendants no.1 to 3 have taken a plea of the decree being a fraudulent document, but fraud has not been proved by leading any clear or cogent evidence. Learned counsel for the appellant relies upon the judgements of the Hon'ble Supreme Court in **Ranganayakamma and another Vs. K.S.Prakash (D) by L.Rs and others 2008 (4) Civil Court Cases 312, Dalip Singh and others Vs. Sikh Gurdwara Prabhandak Committee and others 2003(4) R.C.R (Civil) 788** and judgements of this Court in **K.K.Puri (deceased) represented by LRs Vs. Smt. Krishna Puri and others 2008(1) Civil Court Cases 194, Jagdish and others Vs. Ram Karan and others 2003(1) Civil Court Cases 372, Daya Nand Dahiya Vs. Subash Chand and others 2007(1) PLJ 200 and Ram Pal Kanwal and others Vs. Swetamber Sthanic Jain Sabha, Faridkot (Regd.) and others 1988(1) R.R.R 102**. Learned counsel for the appellant seeks to raise the

following substantial questions of law for adjudication by this Court:-

1. Whether defendants no.1 to 3 are *bona fide* purchasers for consideration and whether their vendor namely Munshi himself had no right to transfer the land on the date of execution of the sale deed?
2. Whether decree dated 15.09.1982 is null and void on account of not being registered?

It is thus prayed that the present appeal be allowed and the impugned judgements and decrees dated 23.12.1986 and 30.07.1988 be set aside. Consequently, suit filed by the plaintiff be decreed throughout.

Per contra, learned counsel for the respondents refutes the arguments as raised by learned counsel for the appellants and submits that both the learned Courts below have rendered concurrent findings of fact on the basis of evidence on record, which calls for no interference whatsoever in this regular second appeal. It is submitted that the earlier decree dated 15.09.1982 can not vest the plaintiff with any title to the suit property. Suit in this respect was filed by plaintiff-Teka on 11.09.1982 against Munshi alone. Though a purported family settlement was alleged therein, none of the other members of the family were impleaded as party. The suit was decreed on 15.09.1982 after three days itself. However, the said decree, it is submitted did not see the light of the day till after the execution of sale deed dated 01.07.1983 in favour of defendants no.1 to 3. Passing of this decree was not reflected in any revenue record, till the execution of the registered sale deed dated 01.07.1983. It is submitted that the defendants are clearly *bona fide* purchasers for consideration. Sale deed dated 01.07.1983, is duly proved on record. It is contended that the evidence of the plaintiff himself reveals the clandestine manner in which the decree dated 15.09.1982 was

passed. It is further submitted that the suit filed by the plaintiff is merely for possession by way of redemption of agricultural land as detailed. The plaintiff, it is submitted has not raised any challenge whatsoever to the sale deed dated 01.07.1983 in favour of defendants no.1 to 3. Possession of the property, is admittedly with defendants no.1 to 3. The same was handed over at the time of execution of sale deed dated 01.07.1983. It is further submitted that there is no substantial question of law which is involved in this appeal for the adjudication of this case. Learned counsel for the respondents relies upon the judgement of Hon'ble Supreme Court in **Smt. Badami (deceased) by Her LR. Vs. Bhali, Civil Appeal No. 1723 of 2008, d/o 22.05.2012** to submit that there is adequate material on record to indicate clear foul play in the passing of decree dated 15.09.1982 and the same has been manipulated only with a view to divest the present defendants of their valuable rights. The plaintiff, it is submitted is proved to be aware of the execution of the sale deed dated 01.07.1983 and was actively involved. It is thus prayed that the present appeal be dismissed and the impugned judgements and decrees passed by the learned Courts below be upheld.

I have heard learned counsel for the parties and have gone through the record with their assistance.

It is a matter of record that the plaintiff-Teka, Munshi and defendant no.11, are the real brothers. Defendants no.12 to 16 are also related being the widow/sons of the other brothers. Munshi, was admittedly unmarried and he died issue-less. He was the owner of the property detailed in the plaint to the extent of 1/4th share. The said 1/4th share was admittedly mortgaged with Paras Ram in July 1967. Plaintiff claims title to the suit

property on the basis of decree dated 15.09.1982 allegedly suffered by Munshi in his favour, whereas defendants no.1 to 3 claim to be *bona fide* purchasers of the same vide registered sale deed dated 01.07.1983 executed by Munshi in their favour. Ex.P-1, is the certified copy of the plaint dated 25.08.1982, which was ultimately decided on 15.09.1982. Ex.P-2, is the certified copy of the written statement allegedly filed by Munshi in the said suit and Ex.P-3, is the certified copy of the statement allegedly suffered by Munshi in the Civil Suit no. 430 of 1982.

I have gone through the said documents. It is amply clear that Teka filed a civil suit against Munshi alone. None of the other brothers were impleaded as party. It is clearly averred in the plaint that the plaintiff used to look after Munshi and take care of all his needs and by way of love and affection, Munshi being pleased with the services rendered by the plaintiff sought to transfer his property in favour of the plaintiff.

Perusal of the record reveals that it is stated in the plaint that possession of the land in dispute was delivered to the present plaintiff on 15.02.1981 and that the plaintiff continued to be in possession thereof. The said plaint, is admittedly instituted on 11.09.1982. Statement of Munshi is purportedly recorded on 15.09.1982. Written statement on behalf of Munshi, is also submitted on the said date.

At this stage, it is relevant to refer to the testimony of PW-3-P.R.Malhotra, Advocate, who allegedly represented Munshi in Civil Suit No. 430 of 1982. PW-3-P.R.Malhotra, is the Advocate, who has identified the person making the statement on 15.09.1982 to be Munshi Ram. PW-3 stated that said Munshi made the statement on 15.09.1982 in his presence

and he identified the said person making the statement and appending his thumb impressions on the statement Ex.P-3 to be Munshi. However, in his cross-examination, PW-3 submits that he could not state whether the person appending the thumb impressions was Munshi himself because he identified him only because the man stated himself to be Munshi. He further stated that he did not remember whether Munshi was a lame person. PW-1-Ram Chander, Advocate, the counsel who had represented Teka (plaintiff in this suit) in Civil Suit no. 430 of 1982 admitted in his cross-examination that the power of attorney attached with the suit was filled on 25.08.1982. The stamps thereon have the date of 10.09.1982, written on them and the suit itself was filed on 10.09.1982. Furthermore, there is no copy of the summons purportedly issued to Munshi, in the file of the said suit. The suit was admittedly decreed on 15.09.1982.

PW-2-Teka, the plaintiff in his cross-examination stated that Munshi use to live in the fields and he did not come along with him at the time of recording of his statement in Civil Suit no. 430 of 1982 and passing of decree dated 15.09.1982. PW-2 further admitted that he did not reveal the passing of the decree to any of his other brothers. Possession of defendants no.1 to 3, over the suit land, is accepted by him. Peculiarly PW-2 in his rebuttal evidence stated that Munshi never used to go anywhere of his own without asking the plaintiff. He further stated that all the work of Munshi was carried out by the plaintiff himself. PW-2 further stated that Munshi had never ever appended his thumb impressions on any papers or documents without asking him.

At this stage, it is pertinent to note that one of the plaintiff's

brother namely Punnu Ram-DW-2 has categorically stated that the land in question had been mortgaged by Munshi in favour of Paras Ram, who had since died. Defendants no.4 to 10 are admitted to be the legal heirs of Paras Ram. He has specifically stated that the plaintiff-Teka was privy to the agreement to sell arrived at between Munshi and defendants no.1 to 3. It is rightly held by the learned trial Court that Punnu Ram had no reason whatsoever to depose against the plaintiff. DW-2 has categorically denied that he has given a false statement as he did not get a share in the property.

Learned counsel for the appellant is unable to deny that the present suit for redemption has been filed after the death of Munshi. Mutation in respect to the alleged decree dated 15.09.1982, was not sanctioned till 23.07.1983, admittedly after execution of the sale deed on 01.07.1983. Though, this fact by itself cannot *per se* detract from the efficacy of the decree, if otherwise proved, it is indeed an important link to prove the genuineness or veracity of the said decree dated 15.09.1982. The registered sale deed dated 01.07.1983, Ex.PW-4/A has been duly proved by the evidence on record. The plaintiff is proved to be privy to the sale deed. No action was taken for redemption of the suit land by the plaintiff during the lifetime of Munshi. Clandestine nature of decree dated 15.09.1982 is evident. There is no quarrel with the proposition of law as laid down in the various judgements cited by learned counsel for the appellants, that a family settlement, if arrived at between the parties must be given due deference and that in case the party in whose favour the property is transferred, has even a semblance of a right, the same should be accepted and the effort should be to maintain peace and harmony in the family. Furthermore, in case a decree is

passed on the basis of an admission and there is no fraud in passing of the decree, the same should not be ignored on the ground that it was not registered. However, in the given facts and circumstances of the case, the entire factual matrix does not point to any ground whatsoever which justifies the setting aside of the ultimate conclusion and concurrent finding returned by both the learned Courts.

It has been held by the Hon'ble Supreme Court in **Gurnam Singh (D) By Lrs and others Vs. Lehna Singh (D) By LRs 2019 (7) SCC 641** has observed as under:-

“Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 of the CPC, is strictly confined to the case involving substantial question of law and while deciding the second appeal under Section 100 of the CPC, it is not permissible for the High Court to reappreciate the evidence on record and interfere with the findings recorded by the Courts below and/or the First Appellate Court and if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal.”

Accordingly, the questions of law, are answered in favour of the respondents and against the appellant.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 23.12.1986 and 30.07.1988

passed by the learned Sub Judge IInd Class, Karnal and learned Additional District Judge, Karnal, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

20.11.2019

s.khan

[LISA GILL]

Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.