

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

RSA-61-1989(O&M)

Date of decision:-26.7.2019

Kesar Singh

...Appellant

Versus

Natha Singh through his LRs and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Argued by: Mr.Jai Bhagwan, Advocate
for the appellant.

Ms.Pooja Arora, Advocate
for respondents No.1 and 2.

H.S. MADAAN, J.

CM-4682-C-2014

Heard.

For the reasons mentioned in the application, the same stands allowed and the order dated 12.2.2014 is recalled. The main appeal is restored to its original number and the same is taken on board today.

RSA-61-1989(O&M)

Briefly stated, facts of the case are that plaintiff Sh.Kesar

Singh minor son of Sh.Dewan Singh through his mother Mrs.Chint Kaur, resident of Patti Amamgarh, Samana had brought a suit against defendants – Natha Singh son of Barkat Singh, Bhajan Singh son of Natha Singh and Dewan Singh son of Hari Singh, residents of that very village seeking a declaration that sale deed dated 15.12.1979 of agricultural land measuring 44 kanals 3 marlas situated at village Amamgarh Patti Samana, Tehsil and District Patiala by defendant No.3 Dewan Singh father of plaintiff in favour of defendants No.1 and 2 is illegal, null and void and he is entitled to the possession of the same.

As per the case of the plaintiff, the parties are governed by Hindu law and plaintiff along with defendant No.3 constituted a joint Hindu family; that the suit land happened to be a joint Hindu family property since it was acquired through funds of joint Hindu family, in which the plaintiff had a subsisting right; that father of the plaintiff, defendant No.3 Dewan Singh had been given bad voices like drinking, gambling and without any legal necessity, he had executed the sale deed in question at a much lower rate; that the sale was not according to mandatory provisions of law of allotment; that the sale deed in question was without consideration and was not for legal necessity. According to the plaintiff on coming to know about the sale deed dated 21.12.1980, the defendants were requested to treat it as null and void and to hand over possession of the suit land

to the plaintiff but to no effect, giving rise to a cause of action to the plaintiff to file a civil suit.

On getting notice, the defendants No.1 and 2 had appeared and filed a joint written statement in which they denied the material assertions in the plaint contending that the parties are Jatt Sikhs settled in Punjab after migration from West Punjab, on account of partition of the country; that the land in question was not purchased by defendant No.3 from the funds of the family from the custodian department, rather it was purchased in open auction for a sum of Rs.6,000/- and it was sold to defendant vide registered by registered sale deed for a sum of Rs.17,000/- thereby getting a profit of Rs.11,000/-. The answering defendants had delivered some money to defendant No.3 for payment of price of land to the government because he was short of funds to make the payment; that the installments were paid by defendant No.3 with the money provided to him by answering defendants; that he had entered into an agreement to sell with answering defendants on 21.12.1972; that the sale consideration fixed was as per prevalent market price; that the sale was in accordance with law; that the answering defendants challenged the locus standi of the plaintiff to file the suit contending that it was not maintainable and was barred by time also and further it was filed by the plaintiff in collusion with defendant No.3; that the same suit between the same parties regarding the land in question

had been dismissed on 7.8.1984, which operates as resjudicata. In the end those defendants prayed for dismissal of the suit.

On getting notice, defendant No.3 did not turn up despite service, as such was proceeded against ex parte.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint contending that suit which was previously instituted was withdrawn on 7.8.1984 with a permission to file a fresh suit on the same cause of action, as such the instant suit was not barred.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to declaration and possession as prayed for? OPP.
2. Whether suit is not instituted by competent authorized person? OPD.
3. Whether suit of the plaintiff is not maintainable? OPD.
4. Whether plaintiff have no locus standi to file the suit? OPD.
5. Whether suit is barred by limitation? OPD.
6. Whether suit is barred by principle of resjudicata? OPD.
7. Whether suit is filed in collusion with defendant No.3 and plaintiff? OPD.
8. Relief.

On 5.10.1985, an additional issue was also framed, which

is as under:

7(a) Whether the sale of the land in dispute is according to the mandatory provisions of law of allotment, which the land in dispute was allotted to defendant No.3? OPP.

Both the parties led evidence in respect of their claims.

During the course of his evidence, the plaintiff had examined Mrs.Chinto as PW1, Sh.Natha Singh, Numberdar as PW2 and Sh.Kashmiri Ram as PW3.

On the other hand, the defendants had examined Issar Singh as DW1, Sh.Natha Singh as DW2, Ujagar Singh as DW3, Sh.Babu Singh as DW4, Sh.Ashok Kumar as DW5, Sh.Dewan Singh as DW6, Sh.Bhajan Singh as DW7 and Sh.Satwant Puri as DW8.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 7-A in favour of the plaintiff and against defendants No.1 and 2, issues No.2 to 6 against the defendants, issue No.7 against the defendants. Resultantly suit of the plaintiff was decreed. This was so done vide judgment and decree dated 20.2.1987.

Defendants No.1 and 2 were aggrieved by the said judgment and decree and they had filed an appeal before the Court of District Judge, Patiala, which was assigned to Additional District Judge, Patiala, who vide judgment and decree dated 13.10.1988 accepted the appeal, set aside the judgment and decree passed by the

trial Court and dismissed the suit.

Being dissatisfied with the judgment and decree passed by the First Appellate Court, the plaintiff had filed the present regular second appeal before this Court, notice of which was issued and the respondents No.1 and 2 appeared through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the appeal.

The trial Court by misappraisal of evidence and misinterpretation of law had wrongly held the suit land to be not a joint Hindu family ancestral property qua plaintiff Kesar Singh and his father Dewan Singh, thereby coming to the conclusion that Dewan Singh had sold the property to defendants No.1 and 2 without any legal necessity against the terms and conditions of the allotment letter and sale deed was executed after a period of seven years of entering into an agreement. The First Appellate Court was completely justified in upsetting the judgment and decree passed by the trial Court observing that it was not proved that the suit land was joint Hindu family ancestral coparcenary property of plaintiff and defendant No.3 and rather it transpired from the record that the suit land had been purchased by defendant Dewan Singh in an open auction from custodian department and there is no evidence that there was any nucleus of the joint family, which provided funds for the

purchase of suit property and the plea that the land had been purchased by selling gold ornaments of mother of the plaintiff did not help the case of plaintiff since those ornaments formed her ISTRIDHAN and was her exclusive property. Therefore, the same could not be termed to be joint Hindu family property, as such, the plaintiff had no locus standi to challenge the alienation.

With regard to defendant Dewan Singh having purchased land in restricted auction vide which the purchaser was debarred from transferring the land to any person, who was not member of schedule caste for a period of 20 years, learned first Appellate Court has rightly observed that it did not carry much significance in view of the facts and circumstances of the case since it was not established on the record that suit land was Hindu joint family ancestral property qua plaintiff and his father Dewan Singh. The plaintiff did not acquire any interest therein by birth, which means that he did not have any pre-existing right in the property. Since the suit property comes out to be self acquired property of Dewan Singh, his son Kesar Singh had no right to challenge the alienation of the said property by Dewan Singh to defendants-purchasers.

As far as the authority referred to by learned counsel for the appellant i.e. **Jit Singh and others Versus Piara and others, the Punjab Law Reporter VOLCXXXV-(2003-3) 292**, wherein it was

observed that the sale of property purchased in restriction auction vide which 20 years embargo had been imposed on auction purchaser Scheduled Caste from alienating, transferring it to any person, who does not belong to schedule caste, such transfer would be against the statute and void.

But again the question arises whether the plaintiff has any locus standi to do so, the answer is in negative.

No substantial questions of law arises.

Thus I do not find any illegality or infirmity in the judgment passed by the learned First Appellate Court. Rather it is based upon proper appraisal and appreciation of evidence and correct interpretation of law.

Finding no merit in the appeal, the same stands dismissed.

26.7.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No