

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

R.S.A. No. 1509 of 1998 (O&M)

DATE OF DECISION :- November 14, 2019

Surinder Kaur and others

...Appellants

Versus

Beant Singh (deceased) through LRs

...Respondents

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

Present:- Ms. Sarika Gupta, Advocate for the appellants No. 3 and 4.

Mr. Y.S. Dhaliwal, Advocate
for Mr. K.S. Dhaliwal, Advocate for the respondent.

Shortly stated the facts of the case are that plaintiff Beant Singh, a resident of village Gharam, Tehsil and District Patiala had brought a suit against the defendants Smt. Surinder Kaur and her husband Pritam Singh of the same village seeking a declaration that sale deed dated 21.7.1988 in respect of suit land is illegal null and void and is result of fraud and that plaintiff is entitled to possession of the suit land measuring 22 Kanal 13 Marlas situated at Village Gharam, Tehsil and District Patiala. The plaintiff further sought relief of permanent injunction restraining defendant No. 1 from alienating the suit land in any manner.

As per version of the plaintiff he is owner in possession of the suit land as per entries in the Jamabandi for the year 1983-84. Some time before filing of the suit he came to know that defendants in connivance with each other had manipulated sale deed purported to have been executed by the

plaintiff in favour of defendant No. 1 and mutation was got sanctioned on the basis of said sale deed. According to the plaintiff he neither executed any such sale deed nor got it registered by appearing before Sub Registrar, Dudhan Sadhan. The defendants have manipulated the same by misrepresentation and playing fraud and have illegally entered into possession of the suit land and then Defendant No. 1 threatened to alienate such land further giving rise to a cause of action to the plaintiff to bring the suit in question.

On notice the defendants appeared and filed a joint written statement contesting the suit. According to them, plaintiff himself had executed the sale deed and got it registered by putting in appearance before Sub-Registrar, Dudhan Sadha. The plaintiff executed agreement to sell on 4.6.1985 in the presence of Gurdip Singh, Ex-Sarpanch and Hakam Singh. He had delivered possession of the suit land and Halqa Patwari had made report in that regard. The original sale deed had been misplaced. Defendant No. 1 had paid the loan amount on assurance of the plaintiff and got the land redeemed from Punjab Land and Mortgage Bank. The sale deed was for consideration, therefore, the suit deserves to be dismissed.

The plaintiff had filed replication controverting the assertions in the written statement and reiterating the averments in the plaint. On pleading of the parties following issues were framed : -

1. Whether the sale deed dated 21.7.1988 regarding the disputed land is illegal, null and void and is a result of fraud on the grounds mentioned in the plaint? OPP.
2. Whether the plaintiff is owner of the suit land and is entitled to possession as prayed for? OPP
3. Whether the sale deed in favour of the defendant No. 1 is invalid? OPP
4. Whether the suit is not properly valued for the purpose of

Court fee and jurisdiction? OPD.

5. Whether the plaintiff has no cause of action to file the present Suit? OPD.
6. Relief.

The parties led evidence in support of their respective claims. During the course of their evidence the plaintiff examined Suresh Kumar, Registry Clerk, Sub-Registrar, Dudhan Sadhan as PW1. Such official had brought the record of the original sale deed No. 708 dated 21.7.1988 registered in the office of Sub-Registrar, Dudhan Sadhan by Sh. Baru Singh, the then Joint Sub-Registrar, Dudhan Sadhan. He proved photo copy of the sale deed as Ex.P1. PW2 Beant Singh plaintiff presented on oath his case as given in the plaint. PW 3 Dewan K.S. Puri, Finger Print and Document Expert, Patiala who had examined the disputed thumb impressions of Beant Singh marked as Q1 and Q2 on the first and last page of registered sale deed dated 21.7.1988. Q3 and Q4 on the registration side comparing those with the specimen thumb impressions marked S1 and S2 of the right and left hand respectively, gave the opinion that disputed thumb impressions marked as Q1 and Q2 are not identical either with LTI or with the RTI specimen thumb impressions of Sh. Beant Singh. The disputed thumb impressions marked as Q3 and Q4 on the registration side show points of the identity in the comparable portion with LTI specimen of Sh. Beant Singh and that the entire disputed thumb impression of the registration side are not clear. He proved his report containing detailed reasoning as Ex.PW3/A, the photographic charts consisting of six photographs and one extra S2 as Ex.PW3/C and the negatives as PW3/D1 to Ex.D6. The specimen sheet from where the specimen thumb impressions had been photographed is Ex.PW3/E. After tendering copy of Jamabandi Ex.P2, copy of

Ex.P5 evidence of the plaintiff was closed. In rebuttal defendants examined Sh. Ashok Kumar Ashu DW1, Manager State Bank of Patiala, Dudhan Sadhan who had brought the deposit receipt of Beant Singh from Account No. 47 with their bank stated that Sarabjit Singh had deposited a sum of Rs.3713/- + 2500/- total amounting to Rs.6213/- in that account. He proved photo copies of the original deposit receipt/voucher as Ex.DW1/A and DW1/B and copy of counter folio as Ex.DW1/C. DW2 Hakam Singh a resident of village Gharam, District Patiala stated that about 8/9 years back Beant Singh had entered into an agreement with Pritam Singh son of Ganga Singh for sale of agricultural land less than three Killas. Pritam Singh had paid Rs.53,875/- in his presence and that of Gurdip Singh Ex-Sarpanch. He stated that the agreement was scribed by the petition writer at the instance of Beant Singh and after typing the same, the petition writer had read over the content to the parties. After admitting the same Beant Singh had thumb marked the agreement whereas the petition writer had entered the agreement in his register. He proved the original agreement as Ex.DW2/A. DW3 Pritam Singh defendant repeated on oath the case of defendants as given in the written statement. DW4 Jiwan Kishore stated that he knows Beant Singh plaintiff and Pritam Singh defendant. About 6 years earlier Beant Singh plaintiff had executed sale deed in favour of Surinder Kaur, wife of Pritam Singh of agricultural land. The petition writer had scribed the sale deed at the instance of plaintiff Beant Singh and after admitting the same Beant Singh had thumb marked the same whereas he (witness) and Jangir Singh attested the sale deed. That Beant Singh had presented the sale deed in the office of Sub Registrar and Sub Registrar read out the contents of sale deed. After admitting the same Beant Singh thumb marked the endorsement and they attested the same. He proved photocopy of the sale deed as Ex.P1 stating that

he recognized his signatures thereon. DW5 Gurjit Singh son of Jangir Singh (the other attesting witness of the sale deed) stated that Sh. Jangir Singh had expired on 2.10.1991 in the hospital on account of accident. He identified his father's signatures on sale deed dated 21.7.1988 as Ex.P1. DW6 Gurbachan Singh, Deputy Manager, Dudhan Primary Cooperative Agricultural Development Bank stated that Beant Singh (plaintiff) had raised a loan from their bank and on 10.6.1988 a sum of Rs.15,472/- was due from him. The said amount was deposited and a receipt was issued which he proved as Ex.DW6/A. DW7 Jagdish Rai scribe of agreement to sell Ex.DW2/A between Beant Singh and Pritam Singh proved its execution. Learned counsel for the defendants produced in evidence copy of mutation Ex.D7, copy of Jamabandi Ex.D8 and closed evidence of defendants.

After hearing arguments learned trial Court decided issues no. 1 to 3 against the plaintiff. Issue No. 4 was decided holding that plaintiff had since made up the deficiency of the Court fee. Issue No. 5 was decided as not pressed and same stand decided against defendants. Vide judgment and decree dated 16.8.1995 the suit of the plaintiff was dismissed with cost. The plaintiff felt aggrieved and had filed an appeal before District Judge, Patiala which was assigned to Additional District Judge, Patiala, who vide judgment and decree dated 13.5.1998 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiff for declaration to the effect that sale deed No. 708 dated 21.7.1988 allegedly executed by the plaintiff in favour of the defendant in respect of land measuring 22 kanals 13 marlas comprised in Khasra Nos. 69//1/1 (4-0), 2/1 (6-0), 2/2 (2-0), 3(8-0) and 8/1 (2-13) as well as mutation No. 1163 are illegal, fraudulent and null and void and same are not binding on the plaintiff and decree for possession of

such land measuring 22 Kanals 13 Marlas was passed in favour of the plaintiff and against the defendants and defendant No. 1 was restrained by way of grant of permanent injunction from transferring by way of sale, gift or mortgage the suit land in favour of any other person. It may be mentioned here that Pritam Singh defendant No. 2 had expired during the pendency of the appeal and his legal representatives were brought on record. Now it was turn of the defendants to feel aggrieved and they have approached this Court by way of filing a Regular Second appeal, notice of which was given to plaintiff respondent who had since died and his legal representatives had been impleaded. Such legal representatives of the deceased respondent/plaintiff put in appearance through counsel.

I have learned counsel for the parties besides going through the record.

As per version of the plaintiff he had not executed the impugned sale deed dated 21.7.1988 with respect to suit land belonging to him in favour of defendant No. 1 Surinder Kaur. For proving that fact he had got the disputed thumb impressions on the sale deed purportedly affixed by him compared with his admitted thumb impressions from Dewan K.S. Puri, Finger Print and Document Expert, Patiala who after detailed examination giving reasons submitted his report coming to the conclusion that thumb impressions allegedly those of Beant Singh marked as Q1 and Q2 on first and last page of registered sale deed dated 21.7.1988 were not identical either with the LTI or with RTI specimen thumb impressions of Sh. Beant Singh. He had got the statement recorded as PW3 in that regard. He was cross examined at length on behalf of defendants but he stuck to his guns and could not be shattered at any material point. The defendants on their part did not examine any finger print expert to

show that the disputed thumb impressions tallied with the specimen thumb impressions of Beant Singh since comparison of finger prints is a perfect one. Finger prints of two individuals cannot tally in any manner. The reports submitted by PW3 Dewan K.S. Puri, Finger Print and Document Expert, Patiala is quite detailed and well reasoned and I do not see any reason to discard the same. That evidence proves to be clincher as far as case of plaintiff is concerned. As it comes out the impugned sale deed does not bear the thumb impressions of plaintiff Beant Singh who had purportedly executed the sale deed. It means no such sale deed had been executed by Beant Singh in favour of defendant No. 1. Though PW 3 Dewan K.S. Puri, Finger Print and Document Expert, Patiala had found similarities between the thumb impressions Q3 and Q4 on the registration side of the sale deed with specimen thumb impressions from the specimen of left thumb impression of Beant Singh but that does not help the defendants much.

Firstly the defendants were required to establish that the plaintiff had executed a legal and valid sale deed in favour of defendant No.1 for consideration and thereafter sale deed is not established and it comes out to be a forged and fabricated document the registration thereof does not have any effect. A perusal of record goes to show that at the instance of defendants Dewan K.S. Puri had compared the thumb impressions purportedly to be those of plaintiff Beant Singh on agreement to sell dated 4.5.1981 and had submitted in his report that the same tallied with specimen thumb impressions of Beant Singh. Though Beant Singh is denying having entered into such agreement to sell with defendant No. 1 and even if it is taken that plaintiff had entered into such agreement to sell with defendant No. 1 until and unless the legal and valid sale deed was executed by the vendor in favour of the vendee the title did not

get transferred. For some strange reasons defendants laid much stress on agreement to sell for getting the thumb impressions purportedly those of plaintiff compared with his admitted thumb impressions but they did not do so as regards the thumb impressions on the sale deed which point out that some hanky-panky was there in the whole transaction. Though the defendants had examined Sh. Hakam Singh an attesting witness of agreement to sell and even if it is taken the execution of such agreement Ex.DW2/A is proved, but then even at the cost of repetition it may be stated that the same does not result in transfer of ownership from plaintiff to defendant No. 1, since execution of legal and valid sale by the plaintiff in favour of defendant No. 1 has not been established. DW4 Jiwan Kishore, though examined being attesting witness of the sale deed but keeping in view replies given by him in his cross examination his testimony does not inspire confidence. He stated that the sale deed was in relation to 3 Killas of land for consideration of Rs.10,000/- and he could not say as to whether the payment/consideration amount was made in his presence or not. He could not tell as to whether the Khasra number of the land in question was mentioned in sale deed by the deed writer. Interestingly, in the sale deed there is no mention of an agreement to sell having been entered into between the parties earlier or the plaintiff having received any consideration amount previously. Further more in the agreement to sell the rate settled between the parties has been mentioned to be Rs.26,600/- per Killa and a sum of Rs.53,875/- having been paid to Beant singh by Pritam Singh son of Ganga Singh. Even otherwise the payment of Rs.53,875/- is earnest money seems to be some what odd since the amount of earnest money is paid mostly in even numbers. The balance amount payable has not been mentioned in the agreement, however, in the sale deed the consideration amount is mentioned to

be Rs.30,000/- which has been shown to be already paid and no amount was paid to the vendor by the vendee before the Sub-Registrar. Interestingly, in the revenue record in the Jamabandi for the year 1983-84 (Ex.P2) Beant Singh plaintiff is shown to have purchased share from Smt.Jaswant Kaur to the extent of 12 Kanal 13 Marlas i.e. the suit land. The land is shown to be mortgaged with PLMB. Thereafter, the land is shown to have been transferred by Beant Singh to Surinder Kaur in Khasra Girdwari Ex.P3. Vide report No. 67 dated 24.10.1987, Pritam Singh is shown to be in possession of the suit land on the basis of having entered into an agreement to sell but then in agreement to sell there is no mention of plaintiff having given the possession of land to defendant purchaser rather in the agreement it is mentioned that at the time of sale deed the plaintiff vendor would hand over the possession to defendant vendee. Defendants claim that they had deposited money with PLMB and State Bank of Patiala for getting the incumbrance removed from the land getting the land redeemed but the receipts proved in evidence by them do not establish that it were the defendants who have deposited that amount. Further more the agreement to sell is in favour of Pritam Singh whereas the sale deed is in favour of his wife Surinder Kaur. The plaintiff is shown to have submitted complaints against Pritam Singh and his sons for taking forcible possession of the suit land from him, the original sale deed was also not produced in the Court by the defendants Thus the plaintiff had successfully proved his case. The case set up by the plaintiff appears to be much more plausible and convincing than one set up by the defendants.

The First Appellate Court of Additional District Judge, Patiala by proper appreciation of evidence and correct interpretation of law had come to the conclusion that the suit for possession of the land deserves to be decreed

and in the process set aside the judgment and decree passed by the trial Court. The judgment and decree passed by the trial Court were not sustainable being result of non application of judicious mind and wrong analysis of legal as well as factual position. The judgment and decree passed by the learned Additional District Judge, Patiala do not suffer from any infirmity or illegality. Those are upheld whereas appeal is found to be without any merit and is dismissed accordingly.

(H.S. MADAAN)
JUDGE

November 14, 2019
p.singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No