

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

R.S.A. No 3134 of 2019

Date of decision : 29.08.2019

Mangat Singh & anr.

....Appellants

versus

Mohinder Singh and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.S. Joshi, Advocate
for the appellants.

RITU BAHRI, J.

The present appeal is directed against judgment and decree dated 24.01.2019 passed by learned Addl. District Judge, Amritsar whereby the learned Appellate Court has partly allowed the appeal of the respondents to the effect that plaintiffs have become co-sharers in the total property measuring 05 kanal 02 marla bearing Khasra No. 7/22/2 and are in exclusive possession in the suit property measuring 01 kanal 01 marla in the said khasra No, on the basis of sale deed dated 20.05.1996 (Ex P.W.2/A).

The facts, in brief, giving rise to filing of this appeal are that plaintiffs/respondent Nos. 1 and 2 filed suit for declaration and mandatory injunction on the averments that they are owners in possession of land cum house measuring 1 kanal 1 marla bearing Killa No.7//22/2 min, situated at village Wadali Guru, Sub Urban Sub-Division No.2, Tehsil and District Amritsar-II, on the basis of registered sale deed dated 20.5.1996. They purchased the said property from defendants No.1 and 2, through their legal and lawful attorney Pal Singh, defendant No.3 for valuable consideration of Rs.41,500/- in the presence of witnesses namely Mukhtar Singh son of Mohinder Singh, Narain Singh son of

purchase of abovesaid land, it was a vacant land and after purchasing the same, the plaintiffs constructed the house for their residence and after construction of house both the plaintiffs started residing in their respective portions with their respective families. They prepared their own ration card, voter Card, Adhar Card etc. and electricity connection is also installed in the suit property. At the time of registration of sale deed, requisite mutation fee was paid alongwith stamp duty, alongwith stamp papers and after registration of the sale deed the plaintiffs after constructing the house jointly, started residing in the suit property without any interference on the part of the defendants No.1 to 3. The plaintiff No.1 being old age now more than 71 years old wanted to sell the above property and for this purpose approached the Halqa Patwari of village Wadali Guru at Amritsar in the month of April 2012 and came to know from him that mutation of the said property had not been entered by the then Halqa Patwari and Tehsildar, defendants No.4 and 5 and ultimately the plaintiff requested to enter the mutation of the suit property but he put the matter on the one pretext or the other and then plaintiffs approached the defendant No.4 Tehsildar, Amritsar-II and filed an application for sanction of mutation in their favour on the basis of above sale deed and in this regard application bearing No.3341-P dated 22.11.2012 was also moved which was marked to concerned officials but till date mutation of the suit land has not been entered by them. The plaintiffs have requested the defendants No.1 to 3 many a time to admit their claim but they put up the matter on one pretext or the other and finally refused to do so. The plaintiffs have also requested the defendants No.4 and 5 to enter the mutation of suit property on the basis of above sale deed but they refused to do so, which led the plaintiffs, to file the suit.

3. Upon notice of the suit, defendants No.1 to 3 appeared through counsel and defendant No.4 appeared in person. None appeared on behalf of defendant

No.5, hence, he was proceeded against exparte. On 5.11.2014, none appeared on behalf of defendant No.4. Hence, he was also proceeded against exparte. Defendants No.1 and 2 filed joint written statement, taking preliminary objections that suit is not maintainable against them, since at no stage they had ever alienated the suit property in favour of the plaintiff, as alleged in the suit. The plaintiff had not come to the Court with clean hands and has suppressed the material facts from the Court. The plaintiff is estopped by his own act and conduct from filing the suit. The suit is time barred and is not maintainable. On merits, it was submitted that defendants No.1 and 2 have no knowledge of any kind of registered sale deed, as alleged in the plaint, since neither such registration of sale deed has ever been executed by them in favour of plaintiffs nor consideration amount was ever received by them, as alleged. Infact, they are joint owners in possession of the suit land and was under their agriculture cultivation during the year 1990. Thereafter, due to fear of terrorists and lack of sources of irrigation the land did not remain under their cultivation. During the year 1993 they borrowed some money from Pal Singh, defendant No.3 to meet their family expenses and for carrying out construction work of their house at village Wadali. They being uneducated and illiterate persons, during the year 1993, defendant No.3 Pal Singh asked them to put their thumb impression on piece of blank paper as security for the payment so borrowed from him and accordingly under good faith they may have put their thumb impression on such blank paper as desired by Pal Singh while lending such money. It is submitted that plaintiffs never met defendants No.1 and 2. Rather they forcibly occupied their land mentioned in the suit inspite of their repeated requests made to him. The plaintiffs are not going to vacate the said forcible possession of their land, as the plaintiffs are influential person having link with high ups and out of fear of life and limbs the defendants No.1 and 2 and their family had to keep mum. The

remaining averments made in the plaint were denied and lastly prayed that suit be dismissed.

5. Defendant No.3 filed separate written statement, taking preliminary objection that the present suit is not maintainable as the same does not conform the provisions of law. The plaintiffs have got no cause of action to file the suit against defendant No.3. On merits, it is admitted that plaintiffs purchased the land, mentioned in the plaint from defendants No.1 and 2, through defendant No.3 as legal and lawful attorney of them. It is also admitted that said land was vacant land at that time but the defendant No.3 does not have any knowledge regarding construction of house by plaintiff on said land. He does not have any knowledge regarding relationship of plaintiff with each other. The defendant No.3 has never visited the demised property after sale of the same. He does not have any knowledge about construction of house on the suit property. The plaintiffs have failed to explain the reason for which mutation is not being done on their name. Defendant No.3 was mere a power of attorney holder of defendants No.1 and 2. He is not duty bound to get the mutation done on the name of plaintiff. The true facts are that plaintiffs have never approached in any manner to the defendant No.3 to declare them owners in possession of the suit property. He has sold the suit property to the plaintiff as legal power of attorney holder of defendants No.1 and 2. The liabilities and duties of seller cannot be imposed upon the power of attorney holder. The remaining averments made in the plaint were denied and lastly prayed that suit be dismissed with costs.

6. Replication to the written statement filed by defendants No.1 and 2 was filed, wherein averments made in the written statement were controverted and those taken in the plaint were reiterated. From the pleadings of the parties, following issues were framed by the learned trial Court, vide order dated

26.3.2015:-

1. Whether the plaintiffs are entitled to the relief of declaration, as prayed in the plaint?OPP

2. Whether the plaintiffs are entitled to the relief of mandatory injunction, as prayed in the plaint?OPP

3. Whether the suit is not maintainable?OPD

The learned trial Court after going through the entire evidence held that plaintiffs have failed to prove on record any document of title in favour of vendors to establish on record that vendor was competent to sell this property and to transfer the same in favour of plaintiffs. Further plaintiffs have failed to prove on record any jamabandi or record of rights to support his version. Mere registration of document between the parties does not ipso facto prove the title of the vendor nor proved that the same has been validly transferred in favour of the plaintiffs to the extent of share of his vendor.

However, the lower Appellate Court partly allowed the appeal of plaintiffs/respondent Nos. 1 and 2 and held that it is proved that defendant No. 3 Pal Singh as power of attorney holder of defendant Nos. 1 and 2/appellants as per power of attorney dated 15.04.1993, executed a sale deed dated 20.05.1996 (Ex PW3/A) in favour of the plaintiffs, whereby they sold property measuring 01 kanal 01 marla bearing killa No. 7//2/2 min, situated at village Wadali Guru for consideration of Rs.41,500/-. This version of the plaintiffs has even been admitted by Pal Singh-defendant No. 3. Defendant Nos. 1 and 2 have failed to rebut the evidence led by the plaintiffs. Further defendant Nos. 1 and 2 have not filed any complaint against Pal Singh that he had obtained thumb impressions of defendant Nos. 1 and 2 fraudulently. Further power of attorney and sale deed has also not been challenged by defendant Nos. 1 and 2. The plaintiffs have proved the sale deed dated 20.05.1996.

A bare perusal of copy of jamabandi shows that defendant Nos. 1 and 2 are recorded as co-sharers in the total property measuring 05 kanals 02

marlas, bearing khasra No. 7//22/2. The plaintiffs have also proved the site plan Ex P.W.3/A to the effect that they have raised construction on the land and have started residing there. They have also produced on record the electricity bills to show their exclusive possession of the property purchased by them. The mutation No. 4121 has already been sanctioned in favour of the plaintiffs as has been reflected in subsequent jamabandies.

Learned counsel for the appellants submits that in the year 1993, they borrowed some money from Pal Singh to meet family expenses and for carrying on construction work in the house and at that time defendant No. 3 got their thumb impression on blank papers as security of the amount.

This argument of learned counsel for the appellants is liable to be rejected as the lower Appellate Court has categorically held that appellants have not filed any complaint against Pal Singh that he got their thumb impression on blank papers as security of the amount. Further they have not challenged power of attorney and sale deed.

The finding of facts recorded by Lower Appellate Court does not require any interference by this Court.

No substantial question of law arises for adjudication by this Court.

The appeal stands dismissed.

August 29, 2019
G Arora

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>