

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

RSA No.4072 of 2019 (O&M)

Date of decision: 22.10.2019

Pakhar Singh and others

... Appellants

Versus

Gurmit Singh and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sunil Garg, Advocate
for the appellants.

REKHA MITTAL, J. (Oral)

CM No.12648-C of 2019

Heard.

Allowed as prayed for. Annexure A1 is taken on record, subject
to just exceptions.

CM No.11183-C of 2019

Prayer in this application is for impleading legal
representative(s) (in short "LRs") of Ninjoo-respondent No.5.

In view of averments made in the application supported by an
affidavit of appellant No.1-Pakhar Singh and arguments advanced,
application is allowed and persons mentioned in para 2 of the application
are allowed to be brought on record as LR's of Ninjoo-respondent No.5
(since deceased), subject to just exceptions, for the purpose of present lis
only.

Amended memo of parties is taken on record.

Disposed of accordingly.

Main Case

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit filed by the respondent/plaintiff for declaration with consequential relief of permanent injunction was decreed by the trial Court vide judgment and decree dated 07.10.2010 that came to be affirmed in appeal by the Additional District Judge, Jalandhar.

The present litigation is dispute between successors in interest of Bhagat Singh and Amar Kaur erstwhile owners of land measuring 50 kanal 6 marlas, detailed in head note of the plaint. The respondent/plaintiff staked his claim qua owner and in possession of suit land on the basis of sale deeds registered vide document No.19 dated 06.04.1998, No.43 dated 17.04.1998 and No.174/1 dated 27.05.1998 executed by Amar Kaur (since deceased). He challenged orders dated 19.08.2000 passed by Assistant Collector Ist Grade, Jalandhar, dated 04.05.2001 by Additional Deputy Commissioner-cum-Collector, Jalandhar and dated 12.06.2001 by Commissioner, Jalandhar whereby mutation was sanctioned in favour of the defendants and plaintiff in equal shares on the premise that the same are illegal, null and void, ineffective qua rights of the plaintiff on the basis of aforesaid sale deeds. He prayed for consequential relief of permanent injunction restraining the defendants from interfering into the title and

possession of the plaintiff in the suit land.

Counsel for the appellants has assailed the impugned judgments primarily on three counts. It is argued that Gurmit Singh respondent/plaintiff instituted the suit through Baljit Singh on the basis of power of attorney purported to be executed in favour of said Baljit Singh. It is submitted that on first page of the power of attorney, there are columns A to M and the principal was required to put his initials in the blank space within a box for any particular sub division in respect whereof he wanted to give an authority to his attorney but since in the present case the attorney has not put his initials in the corresponding blank space against any of the sub divisions A through M, Sh. Baljit Singh was not authorised to institute the suit on behalf of Gurmit Singh.

Another submission made by counsel is that the respondent/plaintiff challenged the orders passed by revenue authorities in mutation proceedings but he did not produce those orders on record, therefore, judgments of the Courts setting aside the orders passed by the revenue authorities cannot be allowed to sustain. The last submission made by counsel is that the respondent/plaintiff failed to adduce satisfactory much less cogent evidence to prove that he is in possession of the suit land, therefore, consequential relief of injunction restraining the appellants from interfering in possession of plaintiff/respondent over the suit property is not based upon materials on record, therefore, suffers from perversity.

Indisputably, Gurmit Singh son of Bhagat Singh is a resident

of USA and instant suit was filed by him through Sh. Baljit Singh on the basis of power of attorney purported to be executed by said Gurmit Singh in New York. The power of attorney is a general power of attorney intended to be constituted pursuant to Article 5, Title 15 of the New York General Obligations Law. No doubt, Sh. Gurmit Singh had not put his initials in the corresponding blank space of a box in respect of any of the sub divisions A through M. However, this power of attorney is signed by the principal at the end of the document. The appellants/defendants did not file written statement as their defence was struck off. Meaning thereby that there was no contest to claim of the respondent/plaintiff that he had authorised Sh. Baljit Singh to institute the suit on his behalf. Till date, Gurmit Singh had not raised an issue with regard to competence of Baljit Singh to institute the suit on his behalf. Had the appellants contested competence of attorney to institute the present suit on behalf of Gurmit Singh, he would have rectified defect, if any, in the power of attorney or ratify the acts done by his attorney Sh. Baljit Singh. This apart, if contention of the appellants is accepted, the power of attorney which was duly executed by the principal in favour of Baljit Singh would be rendered infructuous/negatory even in absence of any objection by the principal with regard to authority of Sh. Baljit Singh to institute the present suit on his behalf. In this view of the matter, I do not find any reason to differ with findings of the first appellate Court with regard to authority of Sh. Baljit Singh to institute the present suit on behalf of Gurmit Singh.

Counsel for the appellants has not made any submissions to assail consistent findings of the Courts in respect of sale deeds dated 06.04.1998 and 17.04.1998 and 27.05.1998 executed by Amar Kaur. Amar Kaur remained alive for a period of about 2 years after execution of the sale deeds. She never assailed correctness and authenticity of the sale deeds in question. Defendants Gurpal Singh and others filed suit No.145 of 2000 to challenge legality and genuineness of the sale deeds but the suit was dismissed as withdrawn on 21.03.2002. Till date, the defendants/appellants have not sought setting aside the aforesaid sale deeds in appropriate proceedings. A presumption of correctness is attached to endorsement made by the Registering Authority. In the given scenario, the Courts have rightly upheld plea of the respondent/plaintiff that he has become owner of the suit land on the basis of sale deeds executed by Smt. Amar Kaur who inherited the suit land on the basis of Will dated 31.03.1987 executed by Sh. Bhagat Singh.

The revenue authorities sanctioned mutation in favour of natural heirs of Smt. Amar Kaur by ignoring the registered sale deeds propounded by the respondent/plaintiff. No sooner the sale deeds propounded by the respondent/plaintiff have been held to be legal and valid bestowing right of ownership qua suit land in favour of the respondent/plaintiff, natural consequence flowing therefrom would be to set aside orders passed by the revenue authorities in regard to sanction of mutation on the basis of natural inheritance to Smt. Amar Kaur. As such,

non-producing of orders passed by the revenue authorities in mutation proceedings would be of no consequence.

The sale deeds duly record that possession of sold land was delivered in favour of the vendee. The appellants could not produce any evidence to counter plea of the respondent that he is in possession of suit land. Counsel for the appellants has failed to point out any materials brought-forth in cross examination of witnesses of the plaintiff on the basis whereof, recital in the sale deeds with regard to delivery of possession becomes doubtful. In absence of any materials on record that appellants were in possession of suit land during life time of Smt. Amar Kaur or they remained in possession even after execution of sale deeds Ex.P8 to P10 by Smt. Amar Kaur, I do not find any reason to differ with findings of the Courts allowing relief of declaration and permanent injunction.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

22.10.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No