

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

RSA-3940-2011(O&M)

Date of decision:-16.12.2019

Ajit Pal Singh alias Harbhajan Singh

...Appellant

Versus

Zorawar Singh and others

...Respondents

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

Present: Mr.Vikas Bahl, Senior Advocate with
Mr.Abhilaksh Grover, Advocate
for the appellant.

Mr.Arun Singla, Advocate
for respondent No.1.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Jaswant Singh son of Mangal Singh, resident of village Chakdana, Tehsil and District Nawanshahar and his son Ajit Pal Singh @ Harbhajan Singh, resident of that very village, then residing in Norway had brought a

suit against Zorawar Singh son of Jaswant Singh, presently residing in Norway, Balwinder Kaur – married daughter of Jaswant Singh, resident of village Subhanpur, Post Office Barian Kalan, Tehsil Garhshankar, District Hoshiarpur and Satnam Kaur another married daughter of Jaswant Singh presently residing in Norway seeking a declaration that plaintiffs are owners in possession of land measuring 21 kanals 8 marlas fully detailed in the head-note of the plaint situated at village Chakdana, Tehsil and District Nawanshahar and the alleged sale deed dated 3.2.2003 in favour of defendant No.1 by plaintiff No.1, is non-existing, null and void etc. being result of fraud, misrepresentation without consideration and hence not binding upon rights of the plaintiffs and other legal heirs being defendants No.2 and 3 and the possession is still with the plaintiffs. The plaintiffs had also sought consequential relief of permanent injunction restraining defendant No.1 from dispossessing the plaintiffs from the suit land or changing the existing nature in any manner.

As per the version of the plaintiffs, the plaintiffs have been in exclusive possession of the suit land as owners; plaintiff No.2 – Ajit Pal Singh @ Harbhajan Singh and defendant No.1 – Zorawar Singh as well as defendant No.3 – Satnam Kaur have been residing in Norway for the last several years; defendant No.1 was called and settled by plaintiff No.2 in Norway spending all the money from his

own pocket; plaintiff No.2 has served his parents whole heartedly constructing a house over an area of one and a half kanal at village Chakdana, where the plaintiff No.1 is residing, whereas plaintiff No.2 also resides there as and when he comes to India; plaintiff No.1 Jaswant Singh has complete confidence in his sons; the suit land is joint Hindu family coparcenary property in hands of plaintiff No.1 – Jaswant Singh and he is *karta* of the family; Jaswant Singh has become weak minded person and has lost senses particularly after the death of his wife; defendant No.1 - Zorawar Singh taking advantage of weakness of mind of plaintiff Jaswant Singh put pressure, duress on him and got executed a sale deed dated 3.2.2003 from the plaintiff Jaswant Singh; the said sale deed is result of fraud, misrepresentation and is not binding upon the plaintiffs; defendant No.1 had obtained signatures of plaintiff No.1 – Jaswant Singh on blank papers; plaintiff No.1 – Jaswant Singh is an illiterate person aged more than 85 years and cannot think of his well being; plaintiff No.1 could not execute the sale deed qua the joint Hindu family ancestral coparcenary property; there was no legal necessity to sell of the land; the sale deed is without consideration and is result of fraud and misrepresentation; when defendant No.1 refused to admit the claim of the plaintiffs, feeling aggrieved, they brought the suit in question.

However, after filing of the suit when it was pending for service of defendants on 27.1.2004, Jaswant Singh – plaintiff No.1

along with his counsel appeared in the Court and withdrew the suit on his behalf. Therefore, vide order of the even date, the suit stood dismissed as withdrawn on behalf of plaintiff No.1.

On getting notice, the defendants had appeared. Later on since defendants No.2 and 3 did not appear, they were proceeded against ex-parte.

In the written statement filed on behalf of defendant No.1, he had raised preliminary objections with regard to the maintainability of the suit and locus standi of the plaintiffs to bring the same further contending that the plaintiffs were estopped by their own act and conduct to bring the suit. On merits, such defendant contended that since plaintiff Jaswant Singh has already withdrawn the suit giving the reason that neither the plaint nor affidavits were read-over to him and his signatures were obtained on plaint without disclosing its nature, the second plaintiff – Ajit Pal Singh @ Harbhajan Singh has no right to challenge the validly executed sale deed dated 3.2.2003; the sale deed was executed for consideration. According to the answering defendant, the suit property is not joint Hindu family coparcenary property and the parties never constituted a jointly Hindu family; as a matter of fact the plaintiff No.1 Jaswant Singh was exclusive owner of the suit property and he had executed a legal and valid sale deed in favour of the defendant No.1. Such defendant prayed for dismissal of the suit.

The plaintiff No.2 had filed replication controverting the allegations in the written statement of defendant No.1 whereas reiterating the averments in the plaint.

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

1. Whether the plaintiff is entitled for declaration as alleged?
OPP.
2. Whether the alleged sale deed dated 3.2.2003 is null and void?
OPP.
3. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP.
4. Whether the suit is not maintainable in the present form? OPD.
5. Whether the suit of the plaintiff is barred by act and conduct?
OPD.
6. Relief.

In order to prove his case, the plaintiff No.2 had examined Sh.Amrik Singh as PW1.

On the other hand, the defendant No.1 had examined Smt.Leela Rani as DW1.

After hearing learned counsel for the parties, the trial Court decided issues No.1, 2 and 3 against the plaintiff No.2 and in favour of defendant No.1, issues No.4 and 5 against the plaintiff

NO.2 and in favour of defendant No.1. Resultantly, suit of the plaintiff No.2 was dismissed with costs. This was so done vide judgment and decree dated 5.11.2008.

Feeling aggrieved by the said judgment and decree, the plaintiff No.2 had filed an appeal in the Court of District Judge, Shaheed Bhagat Singh Nagar ,which was assigned to Additional District Judge, Shaheed Bhagat Singh Nagar, who vide judgment and decree dated 4.6.2011 dismissed the same.

Feeling aggrieved by the judgments and decrees passed by the Courts below, the plaintiff No.2 has knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and his suit be decreed.

Notice of the appeal was issued to the respondents. Initially, all the respondents appeared through counsel. However, later on, there was no representation on behalf of respondents No.2 and 3.

I have heard learned counsel for the appellant and respondent No.1 besides going through the record.

In this case both the Courts below have returned a concurrent finding that the transfer deed dated 3.2.2003 executed by Jaswant Singh in favour of his son Zorawar Singh could be questioned by executant himself. Plaintiff No.2 Ajit Pal Singh @

Harbhajan Singh could not bring enough cogent and convincing evidence to show that the property in dispute was ancestral in the hands of his father Jaswant Singh and for such like reason, he could not transfer/sale it except for legal necessity. However, since Jaswant Singh has admitted the execution of transfer deed, there was no reason to declare it as null and void.

Though before the First Appellate Court the plaintiff No.2 Ajit Pal Singh @ Harbhajan Singh had filed an application under Order 41 Rule 27 CPC for leading additional evidence to prove the revenue record but that application was dismissed for the reason that such documents were already in existence when the civil suit was filed and plaintiff could have proved those documents during the course of his evidence before the trial Court. Another reason which weighed on mind of the First Appellate Court in dismissing the application was that there were no pleadings as to who was the father, grandfather or great-grandfather of the appellant. Therefore, it could not be proved that property in the hands of father of the plaintiff was ancestral coparcenary property. The very fact that plaintiff No.2 Ajit Pal Singh @ Harbhajan Singh had not got his statement recorded as a witness and had rather appeared through his attorney Amrik Singh, who was not conversant with the facts leading to adverse inference being drawn against him, was also considered by the Courts below.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments passed by the Courts below.

The appeal stands dismissed accordingly.

16.12.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No