

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

RSA-4668-2012 (O&M)

Date of decision: 13.09.2019

Hari Kishan and another

...Appellants

Versus

Deepak Jain and others

...Respondents

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

Present: Mr. Amit Jain, Advocate for the appellants.

Mr. Sanjay Vij, Advocate for respondent No.1.

Mr. S.P. Arora, Advocate for respondent Nos.5 & 6.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiffs-Hari Kishan and Budhi, both sons of Khatmal, residents of Village Bandhwari, PO Kadarapur, Tehsil Sohna, District Gurgaon had brought a suit against defendants i.e. Deepak Jain, Tek Ram, Neena Bajaj, Lt. Col. Prithvi Raj Bajaj, Savinder Singh and Lakhbir Singh, seeking a declaration that sale deeds No.5483, 5485, 5486 and 5487 dated 01.03.1996, purported to have been executed by the plaintiffs in favour of the defendants are result of fraud and misrepresentation, therefore, ineffective qua the rights of the plaintiffs and the mutations sanctioned on the basis of such sale deed are also illegal, liable to be set aside, in addition to that seeking a decree for permanent injunction, restraining the defendants from interfering in the peaceful possession of the plaintiffs over the suit land. As per version of

the plaintiffs, they are owners in possession of the agricultural land comprised in khewat No.144, khatoni No.161, Rect. No.62, Killa No.4 (6-4) ½ share in 3 kanals 2 marlas (subject matter of sale deed No.5485 dated 01.03.1996) and land situated at Village Balola, bearing khewat No.60, khatoni No.63, Rect. No.56, Killa No. 24(8-4) to the extent of ½ share, measuring 4 kanals 0 marla (subject matter of sale deed No.5486 dated 01.03.1996), land bearing khewat No.60, khatoni No.63, Rect No.56, Killa No.23(8-0) to the extent of ½ share measuring 4 kanals 0 marla (subject matter of sale deed No.5487 dated 01.03.1996), land of Village Balola bearing Rect No.56, killa No.25 (3-0) to the extent of ½ share measuring 1 kanal 10 marlas was illegally sold by Deepak Jain (defendant No.1) to Neena Bajaj (defendant No.3) and Lt. Col. Prithvi Raj (defendant No.4) under the fictitious sale deed No.5483 for a sum of Rs.21,000/-. That sale deed was purportedly executed by the plaintiffs on the basis of that, mutation was sanctioned on 01.08.1996 vide No.1465. The possession of that land was taken by Deepak Jain and alleged purchasers with the help of anti social elements about two months before filing of the suit. On coming to know about such illegal acts committed by the defendants in pursuance of the criminal conspiracy hatched by them, the plaintiffs had submitted a complaint to the police. According to the plaintiffs, the khasra girdawari entries from 1999 upto 2004 show that the plaintiffs are still in possession of the land falling in Rect No.56, Killa No.25/1 and wrong mutation No.1465 was sanctioned in favour of the bogus purchasers without issuance of notice to the plaintiffs. The

plaintiffs are owners in possession of $\frac{1}{2}$ share in the land comprised in Rect. No.62, Killa No.4 (6-4), measuring 3 kanals 2 marlas, which was illegally purchased vide registered sale deed No.5485 dated 01.03.1996 for a sum of Rs.43,000/- by Savinder Singh and Lakhbir Singh defendants in collusion with each other and then in collusion with revenue authorities got sanctioned mutation No.1468 in their favour. That the plaintiffs are owners in possession of half share in land comprised in khewat No.60, khatoni No.63, Rect No.56, Killa No.23(8-0) measuring 4 kanals 0 marla which was sold illegally by Deepak Jain in collusion with Savinder Singh and Lakhbir Singh and one Tek Ram witness along with others by hatching a conspiracy against the plaintiffs by getting plaintiffs signatures/thumb impressions when they were purchasing the land from Deepak Jain by playing fraud for a fictitious price of Rs.55,000/-, vide sale deed No.5486 dated 01.03.1996. The defendants in collusion with each other got sanctioned mutation No.1469 in favour of Lakhbir Singh, (defendant No.6). That the plaintiffs were defrauded by the defendants who have shown land of Village Balola bearing khewat No.60, khatoni No.63, Rect No.56, Killa No.23(8-0) half share measuring 4 kanals 0 marla allegedly sold vide registered sale deed No.5487 dated 01.03.1996 for a sum of Rs.55,000/- to Savinder Singh. Mutation was wrongly sanctioned vide No.1470 on 01.08.1996 in favour of bogus purchaser Savinder Singh. Nevertheless, the possession of this land is still with the plaintiffs as owners. According to the plaintiffs on 01.03.1996, they had purchased 8 kanals of land comprised in khewat No.38, khatoni No.39,

Min Rect No.63, Killa No.22 (8-0) measuring 12 kanals situated at Village Balola from Deepak Jain-defendant No.1, vide sale deed No.5484 for a sum of Rs.1,65,000/-. The plaintiffs had purchased 0 kanal 12 marlas of land situated at Village Balola from Deepak Jain, vide sale deed No.5488 for a sum of Rs.8500/-. That Deepak Jain and others had hatched a criminal conspiracy along with bogus purchasers and Tek Ram witness of the sale deeds bearing Nos. 5483, 5485, 5486 and 5487 and cheated plaintiffs by getting their signatures upon certain papers in order to convert those papers into fictitious sale deeds. As a matter of fact, the plaintiffs had not executed any such sale deeds. On the one hand, the defendants got sanctioned wrong and illegal mutation and on the other hand, the land purchased by the plaintiffs from Deepak Jain vide mutation No.1471, which was got cancelled by the defendants in collusion with the revenue officials. That one Jeet Ram had appeared on behalf of the bogus purchasers on 01.03.1996 and in one sale deed bearing No.5485, Jeet Ram is shown to be purchaser of the land, whereas, according to the sale deed No.5485, the land is shown to have been sold to Savinder Singh and Lakhbir Singh-defendants. That about two months earlier, the defendants took forcible possession of ½ share of agricultural land of plaintiffs bearing Rect N.56, Killa No.23/1, alleged to have been sold to Smt. Neena and Col. Prithvi Raj and when the plaintiffs came to know that they with the help of respectables intervened and foiled the attempt of defendants from taking possession of other land. The plaintiffs had approached the revenue authorities for taking necessary action. When

the defendants did not pay any heed to the request of the plaintiffs to desist from taking forcible possession of the land in question, they approached the Court, by way of filing a civil suit.

On getting notice, the defendants appeared. Defendant Nos.1, 3 & 4 filed a joint written statement, whereas, defendant Nos.5 & 6 came up with a separate written statement. However, defendant No.2 had not appeared despite service and as such was proceeded against ex parte. In the joint written statement submitted on behalf of respondent Nos.1, 3 & 4, they had taken various preliminary objections with regard to maintainability of the suit; plaintiffs being estopped from filing the suit; they being guilty of concealment of facts; the suit being bad for non joinder of necessary parties; no cause of action having arisen to the plaintiffs to file the suit and the suit being time barred etc. On merits, the answering defendants denied that the plaintiffs are owners in possession of the land in question. According to them, defendant No.1 had rightly sold 1 kanal 10 marlas of land in favour of defendant Nos.3 & 4, vide sale deed bearing document (vasika) No.5483 for a sale consideration of Rs.21,000/-, transferring the possession to the purchasers and they are owners in possession of the land ever since. It is denied that the sale deed in question is the result of any fraud or conspiracy, rather, the sale deed is defended as legal and valid executed for consideration after understanding the contents of the same and after receiving the sale consideration. It is denied that the plaintiffs are in possession of the land bearing killa No.25/1 of Rect No.56. It is contended that defendant Nos.3

& 4 are in actual physical possession of the suit land and their possession is being reflected in the khasra girdawaries. As such, defendants have constructed residential houses and are using the same to the notice of plaintiffs. The answering defendants denied that the plaintiffs are owners in possession of ½ share of killa No.4 of Rect No.62. According to them, the land was rightly purchased by defendant Nos.5 & 6 for a sale consideration of Rs.43,000/- and the possession was delivered to the purchasers and they are in actual physical possession of the property since the time of purchase. That the sale deed in question is legal and valid, executed by the plaintiffs after receipt of sale consideration of Rs.55,000/- on 01.03.1996. It is a registered document. Mutation has rightly been sanctioned on the basis of the said sale deed. It was denied that the mutation No.1471 had been got cancelled by the defendants in collusion with revenue officials without notice to the plaintiffs or without their knowledge. It is further denied that when the plaintiffs purchased the land from Deepak Jain, in that process the signatures of plaintiffs were obtained. The impugned sale deeds are defended as legal and valid documents, executed by the plaintiffs after receiving the consideration amount. It was denied that defendants had taken forcible possession of the land in question or that plaintiffs are in possession of the suit land, refuting the remaining allegations, such defendants prayed for dismissal of the suit.

Written statement filed by defendant Nos.5 & 6 is almost on similar lines as that of defendant Nos.1, 3 & 4. All the defendants prayed

for dismissal of the suit. No replication was filed.

From the pleadings of the parties, following issues were framed:-

1. Whether sale deed bearing Vasika No.5483 and consequent mutation is illegal, null and void? OPP
2. Whether plaintiffs are in physical possession of the land bearing No.56 killa No.25/1 as alleged? OPP.
3. Whether plaintiffs are owners in possession of half share of land subject to sale deed No.5485, if so to what effect? OPP.
4. Whether sale deed bearing vasika No.5486 described in para No.4 of the plaint is illegal, null and void as alleged? OPP.
5. Whether sale deed bearing vasika No.5487 dated 01.03.1996 is illegal, null and void, if so to what effect? OPP.
6. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD.
7. Whether plaintiffs have no locus standi to file the present suit? OPD.
8. Whether the suit is barred by limitation as alleged? OPD.
9. Relief

Parties led evidence in support of their respective claims.

After hearing arguments, the trial Court had decided issues Nos.1 to 5 & 8 in favour of the defendants and against the plaintiffs, whereas, issue Nos.6 & 7 were not pressed during the course of arguments and ultimately, vide judgment and decree dated 10.01.2011, trial Court of Civil Judge (Jr. Divn.) Gurgaon, dismissed the suit filed by the plaintiffs.

The plaintiffs felt aggrieved by the said judgment and decree and filed an appeal before District Judge, Gurgaon, which was assigned to Addl. District Judge, Gurgaon, who vide judgment and decree dated 31.08.2012, dismissed the appeal.

Still feeling aggrieved, the plaintiffs have now knocked at the door of this Court, by way of filing Regular Second Appeal, notice of which was given to the respondents and respondent Nos.1, 5 & 6 have put in appearance through counsel.

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

A perusal of judgment passed by the trial Court goes to show that it had rejected the claim of the plaintiffs for several reasons. The main reason for doing so are enumerated as under:-

- Since as per version of the plaintiffs, their thumb impressions on the sale deeds are not denied, rather, their case is that such thumb impressions were taken upon certain paper, which were later on converted into bogus sale deeds in favour of purchasers. In that way, execution of sale deeds is almost admitted but the plaintiffs have failed to establish that the sale deeds are result of fraud and misrepresentation.
- Second, the plea taken by the plaintiffs that in sale deed bearing No.5485, though, the purchasers are shown to be Lakhbir Singh and Savinder Singh but the sale deed was signed by Jeet Ram indicating the fraud, is not tenable, since

signatures of purchasers on the sale deed are not required and some other person can sign the sale deed on behalf of the purchasers.

- The submission put-forward by learned counsel for the plaintiffs that the sale deeds are in sequence and vide sale deeds bearing vasika (document) No.5484 and 5488, the plaintiffs had purchased the property whereas vide sale deeds bearing vasika No.5483, 5485, 5486 and 5487 they had allegedly sold the suit property share showing that how the defendants got the signatures and thumb impressions of plaintiffs in garb of sale deeds by which they have purchased the property, was not accepted for the reason that the plaintiffs have failed to establish that the impugned sale deeds are result of fraud and misrepresentation, as such, are not legal documents by bringing on record enough cogent and convincing evidence. It is established that the plaintiffs had not only gone to Tehsil for purchasing the land but to sell of the suit property also. Since the sale deeds are registered documents, they carry presumption of due execution.
- That the revenue record in the form of jamabandi and girdawari are in consonance with the sale deeds. Defendant No.5 is shown as owner in the possession of the land comprised in khasra No.56/23 whereas defendant No.6 is

shown as owner in possession of khasra No.56/1/24. Plaintiff No.1 along with his brother and defendant Nos.5 & 6 are shown as joint owners in possession of land bearing khasra No.62/4. This very position is there in jamabandi for the year 2003-04. The mutations sanctioned on the basis of sale deeds are incorporated in the jamabandi for the year 1998-99 and 2003-04. Thus, the claim of the plaintiffs that they are in possession of the land in dispute stands falsified. The Ist. Appellate Court of Addl. District Judge, Gurgaon was of the same view, coming to the conclusion that the plaintiffs have failed to prove that the impugned sale deeds are result of fraud, misrepresentation or without consideration. PW-3 Ant Ram in his cross examination had admitted that his father and chacha had no dispute with document writer, Advocate and Sub Registrar. Plaintiff Hari Kishan appearing as PW-2 in his cross examination had admitted that his two brothers had sold the land from this khewat and his other two brothers and children of third brother had not challenged the sale deeds. Furthermore, Hari Kishan had admitted that he managed accounts of income and expenses. Ant Ram is 8th standard pass. Therefore, they cannot be taken as simpleton persons. There was no reason for Advocate, document writer and Sub Registrar to be party to the alleged fraud in preparing the wrong sale deeds and if any fraud had been

actually played, the other brothers of plaintiffs could have also challenged the sale deeds by which they had transferred the land from the same khewat in favour of the vendee.

- That all the sale deeds are registered documents, carrying certificate of Registrar, pointing out towards due execution of sale deeds. The impugned sale deeds contained signatures/thumb impression of the plaintiffs at various places and it cannot be presumed that they would keep putting their thumb impressions/signatures without bothering for their implication.
- If the plaintiffs were interested in proving the fact that no consideration had passed in their favour for selling the property by impugned sale deeds, they could have summoned the Sub Registrar who had registered the sale deeds or the document writer who had scribed the sale deeds but it was not so done, adversely affecting the case of the plaintiffs.
- The impugned sale deeds are dated 01.03.1996, whereas, suit was filed on 03.09.2005.
- Jamabandi for the year 1998-99 Ex.DC, Ex.DD, Ex.DE and jamabandi for the year 2003-04 Ex.DF, Ex.DB and Ex.DH show that defendants are in possession of the suit land. Such jamabandies carry presumption of truth. The plaintiffs have failed to rebut the presumption and to lead cogent and

convincing evidence to show that they are in fact in possession of the suit property at the moment.

- That the suit is time barred having been filed after 09 years of execution of the sale deeds.

Both the judgments passed by the Courts below are well reasoned, based upon proper appraisal of evidence and correct interpretation of law. There is no illegality or infirmity with such judgments, which might have called for interference by this Court, while hearing the Regular Second Appeal. Learned counsel for the appellants had referred to judgments Lt. Col. Prithvi Singh (Retd.) Vs. Krishan Chander Singh & Ors. 2019(1) RCR (Civil) 635, Lal Singh Vs. Ajit Singh & Anr., 2008(3) RCR (Civil) 650, Jai Narain Vs. Smt. Sona Devi, 2006(2) RCR (Civil) 212, Inder Singh & Ors. Vs. Deiya (since deceased) thr. LRs & Anr. in RSA- 2531-2003, decided on 26.09.2011. However, said judgments are not applicable due to different facts and circumstances and the context in which such observations had been made as well as in the light of detailed discussion above.

No substantial question of law arises in this appeal. The same is found to be without merit and is dismissed accordingly.

13.09.2019

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No