

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

Date of decision: 15.02.2019

1. RSA No.2071 of 2013 (O&M)

Gurdawinder Singh

..... Appellant

Versus

Balwinder Singh

..... Respondent

2. RSA No.3571 of 2013 (O&M)

Balwinder Singh

..... Appellant

Versus

Gurdawinder Singh

..... Respondent

3. RSA No.1669 of 2017 (O&M)

Gurdawinder Singh

..... Appellant

Versus

Balwinder Singh

..... Respondent

4. RSA No.1974 of 2017 (O&M)

Gurdawinder Singh

..... Appellant

Versus

Gajjan Singh (deceased) through his LRs and another

..... Respondents

5. RSA No.5359 of 2017 (O&M)

Gurdawinder Singh

..... Appellant

Versus

Gajjan Singh (deceased) through his LRs and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Arun Jain, Sr. Advocate with
Mr. Amit Jain, Advocate
for the appellant (in RSA No.3571 of 2013).
for the respondent (in RSA No.2071 of 2013).

Mr. Premjit Kalia, Advocate and
Mr. Kewal Krishan, Advocate
for the appellant (in RSA No.1669, 1974 and 5359 of 2017).

Mr. Mohit Kumar, Advocate, for
Mr. M.S. Bhatti, Advocate
for the respondent(s) (in RSA No.1669 and 1974 of 2017).

Mr. Rajinder Sharma, Advocate
for the appellant (in RSA No.2071 of 2013).
for the respondent (in RSA No.3571-2013).

ANIL KSHETARPAL, J.

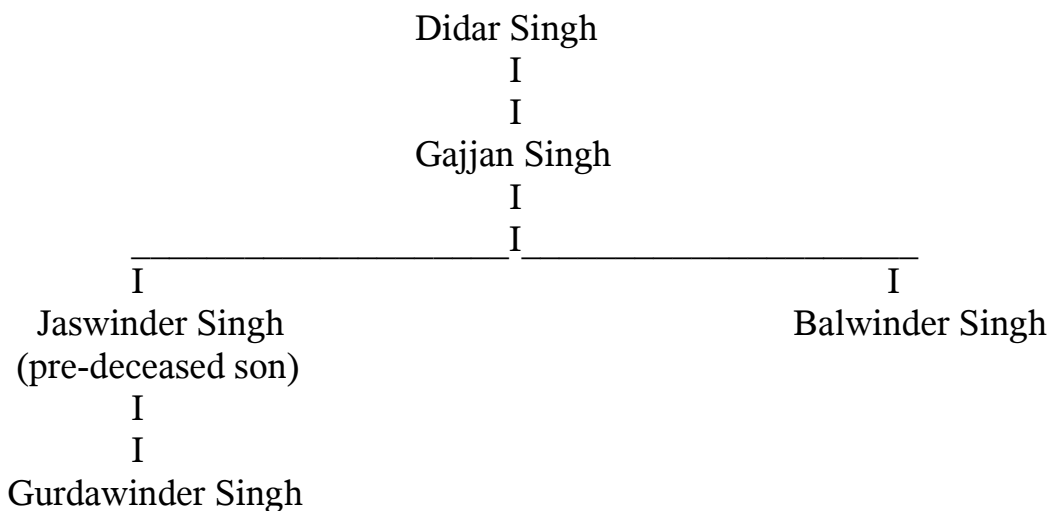
Vide this judgment, RSA No.2071 of 2013, RSA No.3571 of 2013, RSA No.1669 of 2017, RSA No.1974 of 2017 and RSA No.5359 of 2017 shall stand disposed of as the dispute is interrelated and the parties are also common.

In the considered view of this Court, the following questions of law needs determination:-

1. Whether a registered sale deed executed by a grand-father in favour of his grand son (son of pre-deceased son) can be set aside on the basis of inferences and assumptions including absence of evidence of payment of sale consideration particularly when it is established that the grand-father had executed three registered sale deeds in favour of his same grand-son?
2. Whether Section 92 of the Evidence Act, 1872 debars a party to lead evidence to prove nature of the transaction and sale deed?

It is an unfortunate litigation between the closely related parties who are spending their time and money in the Courts rather than

doing some constructive work. However, this Court being duty bound proceeds to decide the litigation. The inter se relationship between the parties can be understood from a short pedigree table which is extracted as under:-



Gajjan Singh was having two sons late Sh. Jaswinder Singh and Balwinder Singh. Jaswinder Singh died when his son Gurdawinder Singh was two and a half year old having been born in the year 1983. After the death of his father, Gurdawinder Singh started residing with his grandfather-Gajjan Singh who brought him up. Gajjan Singh was owner of various properties including the land measuring 2 kanals 5 marlas. He transferred by a registered sale deed half share of the land measuring 2 kanals 5 marlas equivalent to 1 kanal and 2½ marlas in favour of Balwinder Singh who on execution of the sale deed constructed his house (Haveli) and also constructed two rooms for storage of the crop and a shed for parking harvesting combine.

Gurdawinder Singh when became major also wanted to construct his separate home in remaining half portion of the property measuring 1 kanal and 2½ marlas i.e. the property which remained with Gajjan Singh after transfer of half share in the property in favour of

Balwinder Singh. For that purpose, he wanted to take the loan but the bank demanded copy of the sale deed, therefore, according to the plaintiff, his grand-son requested him-Gajjan Singh to execute the sale deed. Gajjan Singh executed three sale deeds in favour of his grand-son Gurdawinder Singh who was barely 19 years of age at the time of execution of the sale deeds. The details of the sale deeds are as under:-

Sr. No.	Date of sale deed	Land Measuring	Amount
1	05/11/01	1 kanal 2 marlas	Rs.40,000/-
2	05/11/01	26 kanal 10 marlas	Rs.6,62,500/-
3	22/11/2001	9 kanal 16 marlas	Rs.2,45,000/-

Gajjan Singh has challenged two sale deeds, one with respect to 26 kanals 10 marlas and second with respect to the land measuring 9 kanals 16 marlas pleading that the aforesaid sale deeds are result of fraud and misrepresentation of the grand-son. It is the case of the plaintiff-Gajjan Singh that he only intended to execute one sale deed with respect to the land measuring 1 kanal and 2 marlas i.e. the first sale deed.

The defendant-Gurdawinder Singh contested the suit and pleaded that the suit has been filed at the behest of Balwinder Singh, other son of Gajjan Singh. It has been pleaded that the sale deeds have been executed by Gajjan Singh with his free will and volition.

Out of the suit, two appeals i.e. RSA No.2071 and 3571 of 2013 have been.

During the pendency of the litigation, with the intervention of the respectables, parties namely Gajjan Singh, Balwinder Singh and Gurdawinder Singh entered into a settlement signed by all of them in the presence of the witnesses on 25.07.2004. Unfortunately, the aforesaid compromise deed has not been filed either in the civil suit or in the appeal.

However, the aforesaid compromise deed is part of the record in RSA No.1974 and 1669 of 2017 which is again between the same parties. As per the compromise deed dated 25.07.2004, Gurdawinder Singh had agreed to transfer 10 kanals and 11 marlas of land in favour of Balwinder Singh in order to make equal distribution of the properties between Balwinder Singh and Gurdawinder Singh. He has also executed a sale deed of 10 kanals and 11 marlas of land in favour of Balwinder Singh on 12.08.2004. Thus, Gurdawinder Singh had complied with the aforesaid settlement which had been arrived at with the intervention of the respectables. However, rather than getting the litigation decided on the aforesaid settlement, the parties have further filed various suits which are being noticed.

A suit was filed by Gurdawinder Singh on 02.08.2007 seeking declaration to the effect that he is owner of 10 kanals 11 marlas of land and the sale deed executed by him in favour of Balwinder Singh dated 12.08.2004 be declared infructuous, null and void since Balwinder Singh and Gajjan Singh had not complied with the compromise. Next suit is for specific performance of the agreement to sell filed by Gurdawinder Singh alleging that an agreement to sell was executed by Gajjan Singh in his favour on 24.07.2003. Another suit was filed by Balwinder Singh for declaration that he is owner in possession of 56 kanals and 9 marlas of land which includes the land which has been sold by Gajjan Singh in favour of his grand son-Gurdawinder Singh.

Now let us deal with RSA No.2071 and 3571 of 2013 because decision on the aforesaid appeals would determine the fate of remaining appeals also.

Learned trial Court decreed the suit whereas First Appellate

Court has partially reversed the judgment of the trial Court and held that the sale deed dated 22.11.2001 is valid. Hence, the suit filed by Gajjan Singh qua sale deed dated 22.11.2001 has been dismissed.

With regard to sale deed dated 05.11.2001 with respect to the land measuring 26 kanals 10 marlas, First Appellate Court has set aside the sale deed on following grounds:-

1. The payment of consideration of Rs.6,62,500/- is not proved.
2. No reason is forthcoming as to why Gajjan Singh executed two sale deeds when one could be executed in favour of his grand son.
3. The evidence of Ranjit Singh, the attesting witness does not inspire confidence as he is related to Gurdawinder Singh.
4. The complaints filed by Gajjan Singh against his son-Balwinder Singh have not been proved.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below in all the cases including record of the trial Court and First Appellate Court.

Learned counsel appearing for Gajjan Singh has submitted that the judgment of the First Appellate Court is erroneous as the sale deed dated 22.11.2001 does not have computer generated photographs although, two other sale deeds executed and registered on 05.11.2001 have computerized generated photographs. He has further submitted that the stamp vendor has not been produced in evidence. Ranjit Singh has admitted that no consideration was paid in his presence. There was no reason for Gajjan Singh to execute three sale deeds when one could be executed. He also submitted that Gajjan Singh was in fiduciary relationship

with Gurdawinder Singh and hence, there are chances of fraud having been played. He further submitted that Gajjan Singh was suffering from 100% disability being deaf and dumb.

On the other hand, learned counsel for the respondent-Gurdawinder Singh who is also the appellant in connected appeal i.e. RSA No.2071 of 2013, has submitted that the parties had entered into a settlement and the sale deed could not be set aside on the ground that the payment of sale consideration has not been proved keeping in view the inter se relationship and recital in the sale deed wherein the entire sale consideration is admitted to have been paid. The scribe of three sale deed has been examined. He has also submitted that the official from the office of Sub-Registrar where sale deeds were got registered has also been examined. He has further submitted that Gajjan Singh, when appeared in evidence, admitted that he had filed complaints against Balwinder Singh.

As regards contention of learned counsel representing Gajjan Singh with regard to sale deed dated 22.11.2001, it will be noted that on the aforesaid sale deed, the photographs of the seller, the purchaser and one witness have been pasted. Gajjan Singh has signed the sale deed in Gurmukhi language (Punjabi). All the three sale deeds are scribed in Gurmukhi language only. Learned First Appellate Court has correctly held that merely because the photograph of the executant and the purchaser are not computer generated, would not make the execution and registration of the sale deed doubtful. There can be more than one reasons for non-generation of the photograph through computer like computer being out of order, failure of electricity supply etc. etc. In the present case, an official of the Sub-Registrar office has been examined and Gajjan Singh has failed to

lead any evidence to prove the other sale deeds which were executed and registered on 22.11.2001 were having computer generated photographs.

As regards second contention that stamp vendor has not been examined, it will be noted that examination of the stamp vendor is not necessary to prove the execution and registration of the sale deed. The stamp vendor only issues the stamp paper on which the sale deed has been scribed. With respect to the sale deed dated 22.11.2001, the stamp paper has been purchased by Gajjan Singh on 09.11.2001. It will be noted that Gurdawinder Singh, the grand son of Gajjan Singh was barely 18 to 19 years of age at the time when the sale deeds were executed. Gajjan Singh was having sufficient experience and exposure in life. He had also executed the sale deed in favour of his other son-Balwinder Singh. Sh. Gajjan Singh had also executed two sale deeds dated 05.11.2001 in favour of the same grand son.

As regards argument of learned counsel that Ranjit Singh has admitted that no sale consideration was paid in his presence, the same would not improve the case of Gajjan Singh. In the sale deed, it has been clearly recited that the payment of the sale consideration has already been paid at home earlier in point of time and title of the property has passed on to the purchaser. Even otherwise, the sale deed being a registered document has a presumption of correctness. Still further, keeping in view the relationship between the parties as all are members of the same family, the adjustment of the amount cannot be ruled out. Further, a registered sale deed cannot be set aside on the ground that non-payment of sale consideration unless there is clause in the sale deed which provide that on non-payment of the sale consideration, the sale would become void. The

vendor only has a right to recover the amount of unpaid sale consideration which is not the prayer made in the present suit. Reference in this regard can be made to Section 55 of the Transfer of Property Act, 1882. Still further, Gurdawinder Singh, the vendee was living with his grand-father-Gajjan Singh, the vendor.

Next contention of learned counsel that why three sale deeds were executed is just to be noticed and rejected. There was a registered sale deed. It all depends upon the wishes of the parties and the manner in which they want to transact their dealings. A registered sale deed cannot be set aside only on the basis of inferences and surmises.

As regards next argument of learned counsel for Gajjan Singh that the parties are in fiduciary relationship, it will be noted that it was Gajjan Singh who was in a dominating position. He was the one who has brought his grand-son. Gurdawinder Singh had barely attained the age of 18 years when the sale deeds were executed. Hence, in absence of evidence, Gurdawinder Singh cannot be held to be in dominating position viz-a-viz his grandfather. He had lost his father when he has only 2½ years old.

Next argument of learned counsel that Gajjan Singh was deaf and dumb is also to be noticed and rejected because the disability certificate reference to which has been made, was issued on 02.09.2005. The aforesaid certificate only shows that Gajjan Singh has suffered 100% disability in hearing. This certificate is after a period of 4 years from the date of execution of the sale deed. There is no evidence that Gajjan Singh was having same problem in the year 2001. Still further, there is no evidence that he was dumb also or not in a position to speak. In old age,

normally there is a hearing loss but that would not make a person incapable of transacting. Still further, the aforesaid certificate is only for income tax rebate purposes.

Now let us deal with the reasons given by the First Appellate Court.

As regards failure of Gurdawinder Singh to prove consideration that this Court has already dealt with the aforesaid issue which does not need further discussion. Second reason i.e. why two sale deeds were executed has also been dealt with by this Court. Reason No.3 given by the First Appellate Court is also erroneous as Ranjit Singh was brother-in-law of Gajjan Singh, therefore, he was more closely related with Gajjan Singh as compared to Gurdawinder Singh. As regards fourth reason, it will be noted that when Gajjan Singh appeared in evidence, he has not clearly replied with respect to complaints against Balwinder Singh in bank as well as in Police. It will be noted that the evidence of Gajjan Singh is not of a truthful witness. He has stated that he came to the office of the Sub-Registrar only on one day whereas it is apparent that he visited the office of the Sub-Registrar on two occasions. From the reading of the statement of Gajjan Singh, it is nowhere proved that Gurdawinder Singh, his grandson had played fraud with his grandfather. For proving fraud, the standard of proof is very high, equivalent to the standard of proof required to prove guilt of the accused in criminal case i.e. beyond reasonable doubt. In the present case, the evidence of the plaintiff on this aspect is lacking.

Now let us discuss the appeal filed by Gurdawinder Singh, validity of the sale deed dated 05.11.2001 with respect to the land measuring 26 kanals 10 marlas. Most of the reasons has already been

noticed by this Court. Apart from the reasons which have been discussed above, it will be noted that the first sale deed with respect to the land measuring 1 kanal and 2 marlas is presented for registration at 1.07 PM. The stamp papers for execution of the aforesaid sale deed were purchased on 02.11.2001. The execution of this sale deed is not in dispute. The sale deed with respect to the land measuring 26 kanals 10 marlas dated 05.11.2001 was presented for registration at 1.58 PM. Thus, there was difference of 51 minutes between the presentation of both the sale deeds. Once it is established that two sale deeds were registered at two different time/occasion, the chances of Gajjan Singh having been misled are very remote. The aforesaid sale deed have been scribed on a stamp paper which was purchased again on 02.11.2001. The correctness of the signatures of Gajjan Singh are not disputed. The correctness of the photographs printed/pasted on the sale deeds are also not in dispute. In order to prove the execution of the sale deed, Ranjit Singh, attesting witness has been examined by Gurdawinder Singh. As regards non-payment of sale consideration, sufficient discussion has already been made and therefore, need no further elaboration.

Now let us deal with the other appeals.

As regards RSA No.1669 of 2017, the same is arisen from a suit filed by Balwinder Singh. Both the Courts have concurrently found that the plaintiff Balwinder Singh cannot be declared owner of 56 kanal and 9 marlas of land. In this case, both the Courts have found that the compromise deed dated 25.07.2004 has been proved. Hence, there is no substance in the stand of Balwinder Singh.

As regards RSA No.1974 of 2017 which arises from the suit

filed by Gurdawinder Singh, it will be noted that no doubt, the sale deed executed by Gurdawinder Singh in favour of Balwinder Singh dated 12.08.2004 does not make a reference to the compromise deed dated 25.07.2004, however, the Courts have erred in ignoring the compromise deed on the ground that such evidence is not permissible under Section 92 of the Evidence Act, 1872. In the present case, Section 92 of the Evidence Act would have no applicability. There were two documents in writing executed by the parties. First document was compromise deed dated 25.07.2004 which provide that Gurdawinder Singh would execute the sale deed in favour of Balwinder Singh, his uncle with respect to the land measuring 10 kanal 11 marlas which has in fact being executed and registered on 12.08.2004 i.e. the other document. Therefore, the Court erred in refusing to examine the evidence with regard to the compromise deed. Such examination of evidence does not amount to contradiction of the terms of the written contract in any manner.

Now let us deal with RSA No.5359 of 2017. In this case, Gurdawinder Singh had filed a suit for possession by way of specific performance of the agreement to sell dated 24.07.2003. Both the Courts have found that the alleged agreement to sell has been interpolated. This Court has also seen the original agreement to sell which is part of the record. The date on which the agreement to sell is alleged to have been executed has been interpolated. The previous date has been erased and in its place, 24.07.2003 has been got typed which is apparent to the naked eyes. The suit was instituted on 06.08.2007, although, the sale deed was to be executed and registered on 08.04.2006. This Court does not find any good ground to interfere with the concurrent finding of fact arrived at by

the Courts below.

In view of the aforesaid, all the appeals are disposed of with the following conclusions:-

1. The sale deeds executed by Gajjan Singh dated 05.11.2001 (with respect to land measuring 26 kanals 10 marlas) as also dated 22.11.2001 (with respect to land 9 kanals 16 marlas) are upheld, therefore, the suit filed by Gajjan Singh would stand dismissed. Resultantly, RSA No.3571 of 2013 filed by Balwinder Singh shall stand dismissed whereas RSA No.2071 of 2013 filed by Gurdawinder Singh shall stand allowed.

2. It is also held that the parties entered into a settlement on 25.07.2004 and in compliance thereof, the sale deed was executed by Gurdawinder Singh in favour of Balwinder Singh, hence the judgments passed by the Courts below in RSA No.1669 as well as 1974 of 2017 are upheld. RSA No.1974 of 2017 has been upheld for different reasons as the Court has held that the sale deed was result of a compromise and since the compromise has been upheld, therefore, the sale deed executed by Gurdawinder Singh in favour of Balwinder Singh on 12.08.2004 cannot be declared infructuous. RSA No.5359 of 2017 shall also stand dismissed.

3. The questions of law framed in the initial part of the judgment are answered in favour of the appellant-Gurdawinder Singh.

All the pending miscellaneous applications, in all the appeals, shall stand disposed of in view of the above said judgment.

15.02.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No