

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

**RSA-2621-2013 (O&M)
Date of Decision: 25.01.2019**

Paramjit Kaur and others

...Appellants

Versus

Poonam Rani and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Ms. Baljit Maan, Advocate,
for the appellants.

Mr. I.S. Maan, Advocate,
for respondent Nos. 4 & 5.

Respondent Nos. 1, 2, 3 & 6 were proceeded
against ex parte vide order dated 04.02.2015.

JAISHREE THAKUR, J.

1. The appellant-plaintiffs have filed present regular second appeal against the judgment and decree dated 02.02.2011 passed by learned Additional Civil Judge (Senior Division), Gidderbaha, whereby suit filed by them was dismissed and subsequently the appeal filed before the Additional District Judge, Sri Muktsar Sahib too was dismissed by judgment and decree date 22.03.2013. While dismissing their appeal, lower Appellate Court also dismissed the application of the plaintiff-appellants under Order 41 Rule 27 C.P.C. for leading additional evidence.

2. In brief, the plaintiff-appellants filed a suit for declaration and permanent injunction with the averments that plaintiff No.1 was the wife while the plaintiff Nos. 2 to 4 were the children of defendant No.3. The suit land was ancestral and coparcenary property of the Joint Hindu Family, consisting of plaintiffs and defendant No.3. Hence, the plaintiffs No. 2 to 4 had pre-existing right in it since birth. Defendant No.3 sold the suit land to defendant No. 1 & 2 vide sale deeds No. 1302 & 1303 dated 25.02.2002, and the said sale deeds were without consideration. Hence, both the sale deeds were null, void, illegal and inoperative on the grounds that (i) that the defendant No.3 had been selling his produce at the shop of Rakesh Kumar, Naresh Kumar and they might have got signatures of Harpal Singh on blank papers; (ii) the vendees had not signed the said sale deeds and hence, the sale deeds were forged and fabricated documents; (iii) the suit land was under mortgage with the State Bank of India, Doda hence, defendant No.3 was not entitled to sell the suit land: and (iv) defendant No.3 was suffering from mental disorder on the dates when the sale deeds were alleged to have been executed. The plaintiffs were in peaceful and cultivating possession of the suit land. Defendants No. 1 & 2 in connivance with defendant Nos. 4 & 5 transferred the suit land vide sale deeds No. 197 & 198 dated 09.05.2005 registered in the office of Joint Sub-Registrar, Doda. These sale deeds were sham transactions, without consideration and had been executed just to deprive the plaintiffs from their valuable rights. Defendant Nos. 1 & 2 without any right and in order to cause loss to the plaintiffs were out to take forcible possession of the suit land and they were trying to alienate the same

against law and facts. Plaintiff No.2 was minor, who was living under the guardianship of his mother Paramjit Kaur, whose interest was not adverse to that of the minor. Hence, the suit was filed through Paramjit Kaur as next friend of the minor.

3. Joint written statement on behalf of respondent No.1 & 2 was filed, wherein it was stated that the suit land was neither ancestral nor coparcenary property of any alleged joint Hindu family. Plaintiffs Nos. 2 to 4 had no pre-existing right in the suit land since their birth. The replying defendants were bona fide purchasers for consideration and the sale deeds were binding on all including the plaintiffs. Other pleas were taken therein apart from denying that the plaintiffs were in possession of the suit land.

4. Defendants No. 3 & 4 contested the suit by filing joint written statement, wherein preliminary objections were taken that defendant Nos. 4 & 5 were bona fide purchasers, the plaintiff had no locus standi or cause of action, defendant No.3 had sold the land for his personal and legal necessity, and for his benefit because he had to repay debts of persons towards property purchased at Rajasthan, so all acts were proper and valid.

5. Plaintiffs filed replications to the written statement on behalf of defendants No.1 & 2 and separate written statement on behalf of defendants No. 3 & 4, wherein contents of written statement were denied as incorrect and averments of plaint were reiterated. From the pleadings of the parties, the trial Court pleased to frame the following issues:-

“1. Whether sale deed No. 1303 dated 25.02.2002 executed by defendant No.3 in favour of defendant No.1 and sale deed No. 1302 dated 25.02.2002 executed by defendant

No.3 in favour of defendant No.2 are illegal, null, void, inoperative, ultravires if so its effect? OPP

2. *Whether sale deed No. 197 dated 09.05.2005 executed by defendant No.2 in favour of defendant No.4 and sale deed dated 09.02.2005 No. 198 executed by defendant No.1 in favour of defendant No.5 are illegal, null, void, inoperative, ultravires, inoperative qua the right of the plaintiff, if so its effect? OPP*
3. *Whether plaintiff is entitled to decree of permanent injunction as prayed for? OPD*
4. *Whether defendants No. 4 & 5 are bona fide purchaser for consideration without any notice in the title of the vendor? OPD*
5. *Whether defendant No.3 sold the land in question for his personal necessity of discharging loan, if so its effect? OPD*
6. *Relief.”*

6. The trial Court, on appreciation of the evidence, came to the conclusion that the sale deeds Ex. D1 and Ex. D2 executed in favour of respondents No. 4 & 5 were for a valid consideration and duly executed documents. The issues were decided against the plaintiffs and in favour of the defendants holding that the plaintiffs have failed to prove the ancestral, co-parcenary nature of property and the defendants have proved the sale deeds under challenge as legal and for valid consideration. Resultantly, it was held the plaintiffs were not entitled to permanent injunction as prayed for. Consequently, suit of the plaintiffs was dismissed. Against the said judgment and decree, the plaintiff-appellants preferred appeal. During the pendency of the appeal an application was also filed by plaintiff-appellants under Order 41 Rule 27 read with Section 151 C.P.C. for additional

evidence to establish that the suit land was ancestral and co-parcenary in nature. The application was also dismissed by the Addl. District Judge on the same day he affirmed the findings of the trial Court on all the issues.

7. Mrs. Baljit Mann learned counsel appearing on behalf of the appellants urges that the First Appellate Court ought to have allowed the application for leading additional evidence in order to prove that the suit property was ancestral and coparcenary in nature. It is contended that this was the plea taken in the plaint itself that the suit land could not be alienated. It is contended that there is voluminous evidence available from the year 1938 to prove that the suit land is ancestral, however due to the inadvertence of their counsel such documents were not produced, resultantly the issue regarding the nature of the land was not framed. It is argued that for the just and proper decision of the controversy the application filed under Order 41 Rule 27 CPC should be allowed. It is further submitted that the application was kept pending by the Appellate Court and decided on the same day while dismissing the appeal.

8. Per contra Mr. I.S. Maan, learned counsel appearing on behalf of the respondents No. 4 & 5- defendants argues that the onus of proving the suit land was ancestral and coparcenary was upon the plaintiff-appellants, which onus was not discharged by them. It is also submitted that the sale deeds were valid and executed for sale consideration while submitting the element of fraud as alleged has not been proved. Counsel for the respondents relies upon judgements rendered in ***Tehal Singh and another vs. Shamsher Singh (since deceased) through L.Rs, 2015(81)***

R.C.R. (Civil) 676, Bhagat Singh vs. Balihar Singh and Ors. 2008(2) PLR 754 and Banta Singh and others vs. Phuman Singh, 1971 PLR 1042
to support his arguments.

9. I have heard the counsel for the parties and with their able assistance have gone through the pleadings and the case law cited.

10. Without going into the merits of the appeal on all issues, the first question that needs to be addressed is whether there is any illegality in the order dated 22.03.2013 of the Appellate Court dismissing the application filed under Order 41 Rule 27 C.P.C.?

11. Order 47 Rule 27 C.P.C. empowers the Court to allow documents to be produced or any witness to be examined in order to enable it to pronounce judgment or, it may allow such evidence or document to be produced or witness to be examined for any other substantial cause.

Order 41 R.27 reads as follows:

“Production of additional evidence in Appellate Court. –

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if – (a) The Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or (b) The

Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, The Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) *Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”*

12. The Appellate Court has the power to allow additional evidence not only if it requires such evidence "to enable it to pronounce judgment", but also for "any other substantial cause". The view expressed by the Hon'ble Supreme Court in ***AIR 1963 S.C. 1526 K. Venkataramiah v. A. Seetharama Reddy and others*** has been consistently followed by the Courts.

13. In the present case, an application under Order 41 Rule 27 C.P.C. was filed during the pendency of the appeal before the Appellate Court seeking permission to lead additional evidence in support of their claim that the suit land was ancestral and could not have been alienated. This application was filed with a plea that the applicants were rustic villagers and were not advised properly by their counsel. It was also stated that a plea had been taken that the property was co-parcenary, which could not be alienated, however no issue regarding the same was framed. Consequently the said documents could not be produced. Notice was given of the said application and the respondents herein chose not to file a reply despite opportunity having been given to them.

14. It is the opinion of this Court that the Appellate Court erred in not allowing the application for additional evidence since the documents as sought to be produced were public documents i.e mutation/jamabandis from the year 1938, which would establish the nature of the suit property and if the same could have been alienated by way of sale deeds. It is also worthwhile to note that the respondents did not contest the said application. With the relevant documents on the record, the court would have been able to do substantial justice between the parties and pronounce judgment accordingly.

15. Consequently the appeal is allowed and the judgment and decree as passed by the First Appellate Court is set aside as also the orders passed on the application filed under Order 41 Rule 27 C.P.C.. In view of aforesaid, this court deems it appropriate to remand this case back to the Court of District Judge, Sri Muktsar Sahib, who in turn would pass appropriate orders with regard to two options available to the Appellate Court in the context of remand on the basis of additional evidence i.e. either to record evidence itself or to summon report from the trial Court on the issue. This would also be in consonance with the judgment as rendered by the Supreme Court in **(2009) 8 S.C.C.231 H.P. Vedavyasachar v. Shivashankara** wherein it has been held that once an application has been filed for leading additional evidence, the Appellate Court has two options before it- one to lead evidence itself and the other to direct the trial court to do so. Needless to say, the documents as sought to be relied upon would have to be proved in accordance with law. The first appeal to be decided

thereafter.

16. Both the parties are directed to appear before the Court of District Judge, Sri Muktsar Sahib on 15.02.2019.

25.01.2019

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.