

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

RSA No. 97 of 2013 (O&M)

Date of decision: 23.9.2019

Shamsher Singh and others

...Appellants

Versus

Karnail Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. D.S. Gandhi, Advocate,
for the appellants.

Mr. Anil Chawla, Advocate,
for the respondents No. 1 & 3 to 5.

JAISHREE THAKUR, J.

The present Regular Second Appeal has been filed seeking to challenge the judgment and decree of both the courts below dismissing the suit filed for declaration to the effect that the appellants are owners of land measuring 68 kanals 16 marlas situated in village Uddar, Tehsil Ajnala, District Amritsar, and the mutation sanctioned in favour of the defendants/respondents herein on the basis of the sale deed dated 13.7.1970 is illegal, null and void, it being a false and fabricated document.

In brief, the facts are that the plaintiffs/appellants filed a suit seeking a declaration that they are owners of the land measuring 68 kanals 16 marlas situated in Village Uddar. It was claimed that the suit land was previously owned by Pritam Singh and on his death, the suit land devolved upon Balbir Singh, Jagir Singh, Kashmir Singh and Surjit Kaur widow of

Pritam Singh. Subsequently, Surjit Kaur also died and Lakhbir Singh, Balbir Singh and Kashmir Singh were appointed as legal representatives of Surjit Kaur by order dated 6.5.1998. Jagir Singh died leaving behind plaintiffs, namely, Shamsher Singh, minor son of Jagir Singh, Balwinder Kaur widow of Jagir Singh and Surjit Kaur widow of Pritam Singh. It was contended that the sale deed dated 13.7.1970 executed by Jagir Singh in favour of the defendants was a false and fabricated document. It was contended that the suit land being ancestral property could not have been sold without legal necessity of the family, while further contending that the mutation entered on the basis of the sale deed was liable to be set aside as the same was based upon a false and fabricated document.

On notice, the suit was contested by the respondents by taking a preliminary objection that the suit was not maintainable in the present form, while taking a plea of limitation as well. It was contended that the plaintiffs have no locus standi to file the present suit. On merit, it was averred that the suit land was not ancestral and in fact, it was self acquired property of Balbir Singh and Jagir Singh. It was also contended that the defendants were in possession of the suit land since 1970 when the sale deed had been executed in their favour by Jagir Singh and the possession had been handed over at the relevant time. Replication was filed and on the basis of the pleadings, issues were framed.

The plaintiffs examined Gurjit Singh, Assistant Passport Officer, Jalandhar as PW1, Balwinder Singh as PW2, Harbhajan Singh as PW3, Lakhbir Singh as PW4 and Kashmir Singh as PW5. On the other hand, the defendants/respondents examined Jaimal Singh as DW1, Karnail

Singh as DW2, Veena Kumari, Additional Head Registration Clerk, D.C. Office, Amritsar as DW3, Surinder Pal, Deed Writer as DW4, Vikram Raj Singh Chohan, Hand Writing and Finger Prints Expert as DW5, Roshan Lal Sharma, Sanitary Inspector as DW6, Partap Singh as DW7 and Sewa Singh as DW8.

The trial Court, on appreciation of the oral as well as documentary evidence, came to hold that Jagir Singh was a major when the sale deed was executed on 13.7.1970 and held that the sale deed as executed was valid and had not been challenged during the life time of Jagir Singh himself, who died in the year 1980 i.e. about 10 years after execution of the sale deed. The mutation in favour of the defendants/respondents was held to be valid. As far as question of limitation was concerned, it was held that the suit was filed beyond the period of limitation in the year 1996 and consequently the suit was dismissed and the appeal preferred too was dismissed by the first Appellate Court. Aggrieved against the judgments and decree, the instant appeal has been filed.

Learned counsel for the appellants herein contends that both the courts below have erred in not appreciating the fact that Jagir Singh was a minor at the time of execution of the sale deed and, therefore, he was not competent to do so. It is also urged that the land was ancestral and, therefore, could not have been alienated without there being a legal necessity to do so. It is further argued that the sale deed Ex. D1 has not been proved as both the marginal witnesses to it have not been examined in this behalf.

Per contra, learned counsel appearing on behalf of the

respondents would contend that both the courts below have given concurrent finding of fact that the sale deed had validly been executed by Jagir Singh in the year 1970 and that he was competent to do so at the relevant time. It is argued that the sale deed is a registered document and the same ought to have been challenged within a period of three years from the date of execution of the same. However, the instant suit was filed after a lapse of about 26 years, while further arguing that during the life time of Jagir Singh, he had never ever challenged the same as being false and fabricated document.

I have heard learned counsel for the parties and with their assistance have gone through the impugned judgments of the courts below.

The first and foremost question is that the suit itself would not be maintainable as it had been filed after inordinate delay of about 26 years. It is an admitted fact that the sale deed was executed in the year 1970 and Jagir Singh did not seek to challenge the same nor did he file any suit seeking possession of the property that had been handed over pursuant to the sale deed. The argument raised that the suit property was ancestral in nature and could not have been alienated without there being a legal necessity is also not sustainable. It has come on the record that Jagir Singh, executor of the sale deed had died prior to his father Pritam Singh. This fact is evident from the statement of Kashmir Singh (PW.5), who is real brother of Jagir Singh. The land was sold by Jagir Singh on 13.7.1970 and on the same date, the land was also sold by Pritam Singh, father of the executor. Therefore, the question of the same being false and fabricated document does not arise. Therefore, the question of Jagir Singh inheriting the land

from his father would not arise and hence it cannot be said that the suit land was ancestral. Even as per Ex. D18, which is jamabandi for the year 1968-1969, both Balbir Singh and Jagir Singh have been shown as joint owners of the suit land. On a reading of both the impugned judgments, this Court is of the opinion that there is no infirmity or illegality in the same. Both the courts below have appreciated the evidence and have rightly come to the conclusion that the suit land was not ancestral in nature and there was no evidence on the record to prove that the sale deed was a forged and fabricated document. Moreover, the sale deed was not challenged by Jagir Singh during his life time and it is only after lapse of about 26 years, the same was challenged, which is well beyond period of limitation. No question of law, much less substantial question of law arises for consideration in the present appeal.

The Regular Second Appeal stand dismissed accordingly.

23.9.2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No