

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

RSA-988-2013(O&M)

Date of decision:-19.8.2019

Gurcharan Singh

...Appellant

Versus

Mohinder Singh

...Respondent

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

Present: Mr.Vaibhav Sehgal Advocate
for the appellant.

Mr.J.S. Dadwal, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Gurcharan Singh has brought a suit against his brother – Mohinder Singh seeking a declaration that he is owner in possession of land measuring 14 kanals 1 marla, fully detailed in head-note of the plaint situated at village Ramgarh, Tehsil and District Ludhiana, as entered in the jamabandi for the year 1988-89 and that the alleged sale deed dated 16.5.1994 said to have been executed by plaintiff in favour of defendant and mutation No.1895 dated 13.4.1995 sanctioned on the basis thereof are illegal and result of fraud and misrepresentation, not conferring any title or right of ownership on the defendant besides craving for grant of permanent injunction restraining the defendant from interfering in possession of the plaintiff over the suit land.

As per the version of the plaintiff, the defendant had obtained his signatures on the impugned sale deed dated 16.5.1994 by misrepresentation and fraud asking the plaintiff to sign the sale deed stating that he would pay the sale consideration of Rs.1,00,000/- to the plaintiff after getting the sale deed registered before Sub Registrar, Ludhiana; that the plaintiff demanded a sum of Rs.1,00,000/- from the defendant but he put off the matter on one pretext or the other; then the defendant filed a suit for grant of permanent injunction against the plaintiff on false and frivolous allegations; that the plaintiff came to know about the fraud and misrepresentation when he received summons in that case; that the said suit was ultimately dismissed on 13.5.1999. According to the plaintiff, he called upon the defendant to admit his claim and to treat the sale deed and mutation sanctioned on its basis as non-existing, not conferring any right, title or interest to the defendant but to no effect. Feeling aggrieved, the plaintiff had filed the suit in question.

On notice, the defendant appeared and filed written statement contesting the suit, raising various preliminary objections, contending that the suit was time barred; that the same was not maintainable; that the plaintiff was liable to be rejected under Order 7 Rule 11 CPC; that the plaintiff was estopped by his own act and conduct from filing the suit; that the suit was barred under Section 41-H of Specific Relief Act. As per the stand of the defendant, the impugned sale deed regarding land measuring 14 kanals 1/2 marla was executed by the plaintiff on 16.5.1994 and the plaintiff was aware of the same since then; that the sale deed was executed by the plaintiff of his own and was for consideration; that the plaintiff is

not in possession of any portion of the suit land and rather the defendant is in possession thereof and cultivating it being owner; that the khasra girdawaris of the suit land had also in the name of defendant. On merits, the defendant repeated the assertions taken by him in the preliminary objections contending that another sale deed was executed by plaintiff along with Sh.Anokh Singh, uncle of the parties for a sale consideration of Rs.6,000/-; that the plaintiff had not challenged the validity of that sale deed. According to the defendant, the consideration amounts of both the sale deeds registered as documents No.7146 and 7147 were paid by the defendant to the plaintiff and Anokh Singh and endorsements of Sub-Registrar were signed by the plaintiff after receiving the entire sale consideration; that the possession of the property in dispute was delivered to the defendant by the plaintiff on 16.5.1994 at the time of execution of sale deeds. Refuting the remaining allegations in the plaint, the defendant prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

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

1. Whether the plaintiff is entitled to declaration as prayed for? OPP.
2. Whether the sale deed dated 16.5.1994 and the mutation No.1885 dated 13.4.1995 are illegal and outcome of fraud and misrepresentation? OPP.
3. Whether the plaintiff is entitled for permanent injunction as prayed

for? OPP.

4. Whether the plaintiff has withheld the material fact from the Court?

OPD.

5. Relief.

In order to prove his case, the plaintiff had got his statement recorded as PW1.

On the other hand, the defendant had got his statement recorded as DW1 and he further examined Sh.Harbrinder Singh as DW2, Ms.Veena Arora, Recordkeeper, Sub Registrar, East, Ludhiana as DW3 and Sh.Inderpreet Singh Kahlon, DRO, Barnala as DW4.

After hearing learned counsel for the parties, the trial Court decided issues Nos.1 to 3 against the plaintiff and in favour of the defendant, issue No.4 against the plaintiff and in favour of the defendant. Resultantly, suit of the plaintiff was dismissed with costs This was so done vide judgment and decree dated 21.10.2010.

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Ludhiana, which was assigned to learned Additional District Judge, Ludhiana, who vide judgment and decree dated 20.7.2012 dismissed the same.

Being dissatisfied with the judgments and decrees passed by the Courts below, the legal heir of the plaintiff has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and suit of the plaintiff be decreed.

On getting notice of regular second appeal, the

respondent/defendant appeared through counsel.

I have heard learned counsel for the appellant besides going through the record and I find that there is absolutely no merit in the appeal.

The judgments passed by the Courts below are well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. The courts below while rejecting the claim of the plaintiff have taken into consideration the fact that in the recital of the sale deed itself, the factum of passing of consideration amount is mentioned and plaintiff had admitted the receipt of consideration amount before the Sub Registrar at the time of registration of the sale deed. Therefore, now he cannot say that the sale deed was without consideration. Since the plaintiff admits the execution of the sale deed except of the fact that according to him, the consideration amount of Rs.1,00,000/- was not received, onus was very heavy upon him to prove this fact. The defendant had successfully discharged the onus on him by proving in evidence the sale deed in question in which it is mentioned that the consideration amount had passed from the defendant-vendee to the plaintiff vendor and plaintiff vendor had admitted the receipt of consideration amount before the Sub Registrar, where the sale deed was registered. The plaintiff failed to discharge the heavy burden of showing that the sale deed was without consideration. Therefore, he was certainly not entitled to declaration that the sale deed in question was illegal, null and void.

The allegations with regard to fraud and misrepresentation are very vague and do not make any sense. As per law such type of

allegations are to be proved strictly. The plaintiff has failed to bring on record enough cogent and convincing evidence to show that any fraud was played upon him by the defendant or any misrepresentation was made by the defendant to him at the time of execution of impugned sale deed by him in favour of the defendant. Rather the sale deed comes out to be a legal and valid document executed for consideration. As a result of execution of the sale deed, the title in the suit land stood transferred to the defendant, who became owner in possession thereof and this position is so reflected in the revenue record available on the file. The First Appellate Court had rightly affirmed the findings of the trial Court upholding the judgment and decree passed by it.

Furthermore, the impugned sale deed being dated 16.5.1994 to which the plaintiff was a party, having been challenged by way of filing Civil Suit on 13.8.1999, the suit was clearly filed beyond period of limitation since the limitation prescribed for filing a suit for declaration under the Limitation Act is three years. The suit having been filed beyond that period was clearly, time barred and bound to fail on that score alone.

Learned counsel for the appellant has referred to authorities i.e. *Kaliaperumal Versus Rajagopal and Anr., 2009(2) RCR(Civil) 471, Yumnam Ongbi Tampha Ibemma Devi Versus Yumnam Joykumar Singh and Ors., 2009(2) RCR(Civil) 474, Hari Chand Versus The Superintending Canal Officer, Patiala, 1995(3) RRR 208, Manish Shukla & Ors. Versus Anand Kumar Sharma & Ors., 2016 AIR CC 1995* and *Janardan Rai & Ors. Versus Umesh Prasad Rai & Ors., 2017(4) PLJR 104*. However, those do not find application to the present

case due to different facts and circumstances and the context in which such observations had been made.

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 and decrees passed by the Courts below.

The appeal stands dismissed accordingly.

19.8.2019

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No