

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

RSA No.3226 of 2015 (O&M)
Date of Decision: February 21, 2019

Daljit Singh and another

...Appellants

Versus

Prem Singh

...Respondent

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Sumeet Goel, Advocate
for the appellants.

Mr. Deepak Aggarwal, Advocate
for the respondent.

HARINDER SINGH SIDHU, J.

The defendants have filed this regular second appeal impugning the judgment and order dated 31.3.2015 of the learned Additional District Judge, Patiala whereby he allowed the appeal of the plaintiff against the judgment of the learned Civil Judge (Jr. Division), Nabha dated 16.03.2012 dismissing the suit of the plaintiff.

The plaintiff had filed a suit for declaration to the effect that he is owner of suit land situated at Village Dhanouri, Teshil Nabha, District Patiala and for possession of the above said land along with its mense profits. It was his case that earlier Jagga Singh-defendant No.2 was owner of the suit land. Jagga Singh sold the same to Jawala Singh son of Phaman Singh resident of village Nohra, Tehsil Nabha through a registered sale deed dated 28.05.1982 after receiving the sale consideration. At that time, the suit

land was mortgaged with possession to Bhagwan Singh and Gobind Singh. Bhagwan Singh was the father of the plaintiff. Jawala Singh paid the mortgaged amount of Rs.5,000/- to Bhagwan Singh and Gobind Singh and took possession of the suit land after redeeming the same. He remained in possession of the suit land as owner till his death on 18.12.2004. Jawala Singh was a bachelor. He was the maternal uncle of the father of the plaintiff and was residing with the plaintiff at Village Dhanouri who looked after and served him during his life time. In lieu thereof, he executed a Will dated 01.08.2001 in favour of the plaintiff. The plaintiff became the owner of the suit land after the death of Jawala Singh on the basis of the Will. The defendants by taking benefit of wrong revenue entries in their favour took forcible possession of the suit land. The revenue entries showing their ownership and possession are wrong and liable to be corrected. The plaintiff is entitled to possession along with mense profit.

Defendant No.1 in his written statement admitted that Jagga Singh- defendant No.2 was the owner of the suit land. It was pleaded that defendant No.1 came into possession of the suit land on 15.06.1990 as owner. Since then he is in occupation thereof peaceably and openly to the knowledge of the plaintiff and the world at large. He is thus owner of the suit land. It was further averred that Jagga Singh- defendant No.2 never sold the suit land to Jawala Singh. Jawala Singh was the brother of the mother of Jagga Singh. He was unmarried. Jawala Singh had love and affection for Jagga Singh and as such he shifted to village Dhanouri, Tehsil Nabha with Jagga Singh and started looking after his affairs. Jagga Singh reposed full confidence in Jawala Singh. Jawala Singh wanted to get

married but was not getting matrimonial proposals as he did not own sufficient land. On his request, Jagga Singh transferred the suit land in favour of Jawala Singh by way of fictitious sale deed without any consideration and without free consent. Defendant No.2 redeemed the suit land by paying the mortgaged amount to Bhagwan Singh and Gobind Singh. During his life time Jawala Singh never remained possession of the suit land which remained in the cultivating possession of the defendant No.1. It was denied that Jawala Singh executed any Will in favour of the plaintiff. It was further averred that Jawala Singh was in need of money for household expenses. He requested Bhagwan Singh father of the plaintiff and his brother Gobind Singh who got his thumb impression on documents without disclosing its contents as Jawala Singh was an illiterate person and advanced loan with interest. Thus, Jawala Singh never liked Gobind Singh and Bhagwan Singh.

In his separate written statement, defendant No.2 reiterated that the Jawala Singh got the sale deed of the suit land from defendant No.2 with a view to attract the matrimonial proposals and that no sale consideration was paid and that possession of the suit land was not transferred to Jawala Singh. It was further averred that Jawala Singh died as a bachelor at the house of defendant No.2 who served and looked after him and also performed his last rites and there was no occasion for Jawala Singh to execute a Will in favour of the plaintiff.

The learned Trial Court framed the following issues:

“1. Whether the plaintiff is owner of the suit property?OPP

2. *Whether plaintiff is entitled to declaration as prayed for?OPP*
3. *Whether plaintiff is entitled to possession?OPP*
4. *Whether plaintiff is entitled to mesne profits, if so, at what rate?OPP*
5. *Whether Jawala Singh executed legal and valid Will dated 8.1.2001, if so, its effect? OPD”*

PW-1 Sadhu Ram deposed that he was resident of Village Dhanouri. Jawala Singh was also the resident of the same Village and was known to him. In 1982, Jawala Singh had purchased the suit land from Jagga Singh and had taken possession of the same. Since then he had been residing at Village Dhanouri with the plaintiff. Till his death on 18.12.2004, he was in possession of the suit land. He stated that Jawala Singh executed a legal and valid Will in favour of the plaintiff on 01.08.2001 in his presence and in the presence of Mehar Din son of Umar Din. The Will was scribed by Mehar Din on the instructions of Jawala Singh. Mehar Din read out its contents to Jawala Singh in his presence and Jawala Singh after admitting it to be correct affixed his thumb impression. Sadhu Ram and Mehar Din appended their signatures as witnesses. He also proved the Will Ex. P-1.

PW-2 Parkash Kumar deposed that on 28.05.1982 Jagga Singh executed a sale deed of land measuring 6 B-14B in favour of Jawala Singh son of Phaman Singh and Jagga Singh received an amount of Rs.20,100/-. He deposed that he scribed the said sale deed in the presence of Narata Singh Lambardar Village Dhanouri and Ishar Singh son of Tralok Singh resident of Village Alhowal. He read over the same to Jagga Singh in their presence and he admitted the same to be correct. He had made an entry regarding the sale deed in his register at Sr. No.192 dated 28.05.1982. Thereafter, he got

the signatures/thumb impressions of the witnesses and the parties on the sale deed. Jagga Singh also appended his signatures on the register. He identified his handwriting, signatures and stamp on the the sale deed dated 28.05.1982 Ex.P-2. He proved the certified copy of entry No.192 dated 28.05.1982 of his register as Ex. P-3. PW-3 Dr. B.K. Chopra SMO, CHC Amargarh proved on record the original death certificate of Jawala Singh Ex.P.W-3/A and his admission record Ex. PW-3/B and Bed Head Tickets Ex. PW-3/C, Ex. PW-3/D, Ex. PW-3/E. PW-4 Chajju Singh, Member Gram Panchayat Village Dhanouri deposed that Jawala Singh purchased the land from Jagga Singh and that he paid the amount of Rs.5000/- to Bhagwan Singh and Gobind Singh for redeeming the said land. Jawala Singh remained in possession of the land till his death on 18.12.2004. He also deposed that Jawala Singh was a bachelor and he was looked after by the plaintiff and his family. Some days before his death Jawala Singh fell ill. He was got treated at Civil Hospital, Nabha. Jawala Singh had executed a Will in favour of the plaintiff being pleased with his services. The defendants had forcibly taken possession of the suit land after the death of Jawala Singh. PW-5 Gurdeep Singh, a Registry Clerk, Tehsil Office, Nabha proved on record sale deed No.3026 dated 27.01.1982, sale deed No.449 dated 28.05.1982 and sale deed No. 451 dated 28.05.1982, sale deed No. 3026 Ex P-3, sale deed No. 449 Ex P-4. PW-6 Maheshinder Sharma Document Writer, Court Complex Nabha District Patiala deposed that on 21.01.1982, Jawala Singh got executed a sale deed in favour of Bachhittar Singh, Bikram Singh and Bhupinder Singh of land measuring 19B-6B and that he scribed the said sale deed. Jawala Singh had appended his thumb impression on the

same after admitting it to be true and correct. He had made an entry at Sr. No.832 in his register. He deposed that he had seen the certified copy of the sale deed dated 21.01.1982 Ex.P-3 and identified his signatures and stamp thereon, which had been entered in his register at Sr. No.832 dated 21.01.1982, certified copy thereof was Ex.P-6. He also proved on record the sale deed 28.05.1982 Ex.P-4 and entry of the same in his register Ex.P-5. The plaintiff appeared as PW-7 and deposed as per the pleading of his case. PW-8 Navdeep Gupta Handwriting and Fingerprint Expert after comparing the disputed thumb impression of Jawala Singh marked as Q-1 on the unregistered Will dated 01.08.2001 (Ex.P-1) with the standard thumb impression marked as S-1 to S-3 on registered sale deed dated 21.01.1982 bearing Wasika No.3026 dated 27.01.1982 (Certified photocopy of which is Ex.P-3) with Sub Registrar, Nabha, S-4 to S-6 on another registered sale deed dated 28.05.1982 bearing Vasika No.449 with Sub Registrar, Nabha (Certified photostat copy of the same as Ex.P-4 on the case file) opined that the disputed thumb impression marked as Q 1 was identical with the standard thumb impressions.

DW.1 Dharam Pal Bansal, Clerk to Sh. Diwan Vinod Kumar Goel, Advocate Nabha deposed that the written statement Ex.D-1 had been typed by Mr. Goel at the instance of the defendant. DW-2 Jatinder Pal Singh, Registry Clerk, Office of Sub Registrar, Nabha District Patiala proved on record the Will dated 24.05.1990 executed by Jawala Singh in favour of Gurmail Singh, Gobind Singh, Baljinder Singh and Darshan Singh Ex.D-3. DW-3 Kamaljeet, Document Writer, Nabha Tehsil Nabha, deposed that on 24.05.1990 he scribed the Will Ex.D-3 at the instance of Jawala

Singh in favour of Gurmail Singh, Gobind Singh, Baljinder Singh and Darshan Singh and proved on record the entry of his register ExD-4. Defendant No.2 appearing as DW-4 deposed as per the stand in the written statement. He deposed that no amount was paid to him on the basis of the sale deed dated 28.05.1982 and that Jawala Singh was not given possession of the suit land. He further deposed that defendant No.1 is in possession of the land in dispute since 15.06.1990.

Learned Trial Court referring to the cross examination of Gurpreet Singh , who had proved on record sale deed No.3026 Ex.P-3 and sale deed No.449 Ex.P-4 wherein he had deposed that he was not posted in the office of Sub Registrar, Nabha at the time of registration of sale deed Ex.P-4 and Ex.P-5 and cross-examination of PW-6 Mahesh Inder Sharma, who had also proved on record the sale deed dated 21.01.1982 (Ex.P-3) and sale deed dated 28.05.1982 (Ex.P-4) wherein he deposed that no amount of consideration was passed in his presence concluded that the plaintiff had failed to prove the passing of consideration in favour of Jagga Singh. As no consideration was proved to have passed in favour of Jagga Singh on 28.05.1982 when he sold the land in favour of Jawala Singh the court held that the sale deed to be a sham transaction.

Taking note of the fact that PW-1 Sadhu Ram was not a relative of Jawala Singh, the learned Court thought it improbable that Jawala Singh would have executed the Will in his presence. The ld. Trial Court further noted that in the Will dated 01.08.2001 in the upper portion there is equal space between the lines but in the lower portion of the Will, the space is less

thumb impression of deceased Jawala Singh. In the Will dated 01.08.2001 there is no mention of the earlier Will dated 24.05.1990. It was thus concluded that the Will dated 01.08.2001 was surrounded by suspicious circumstances.

Thus the Ld. Trial Court concluded that the plaintiff had failed to prove the sale deed dated 28.05.1982 and passing of consideration in favour of Jagga Singh by deceased Jawala Singh and also failed to prove the genuineness and validity of the Will dated 01.08.2001.

As the plaintiff had failed to prove that he is owner of the suit land he was also not held entitled to mense profit. Accordingly, issues no. 1 and 4 were decided against the plaintiff. The Trial Court also decided the issue no.6 in favour of the defendant holding that the possession of the defendant over the suit land has been admitted by the plaintiff. The plaintiff never demanded back the possession from the defendant and never raised any objection to the possession of the defendant, which was open and hostile to the knowledge of the entire world. Accordingly, it was held that defendant No.1 had become owner of the land by way of adverse possession. In sum, the suit was dismissed.

The plaintiff filed an appeal, which has been allowed. The Ld. Lower Appellate Court held that the sale deed have been duly proved. Its findings in this regard are as under:-

“.....PW-5 Gurpreet Singh, the Registration Clerk who has brought the summoned record from the office of the concerned Sub Registrar and as per that office record Ex.P3 and Ex.P-4 the aforesaid sale deed dated 28.5.1982 Ex.P2 was entered at Vasika No.3026 and 449 respectively. Furthermore,

this Court is of the considered view that in order to prove the aforesaid Ex.P2 i.e. the sale deed dated 28.5.1982, the present appellant/plaintiff has examined PW-2 Parkash Kumar, Vasika Navees, Court Complex, Nabha, who has testified that he is working as a Vasika Navees since the year 1980. He has further testified that he has scribed one sale deed dated 28.05.1982 executed by Jagga Singh in favour of one Jawala Singh with respect to the land measuring 6 bighas 14 biswas. He has further testified that he has made an entry in this regard at serial No.192 dated 28.5.1982 in his register. He has further testified that he has also got affixed the signatures/thumb impression of executants as well as attesting witness of the aforesaid sale deed dated 28.5.1982, in question Ex.P2 in his register. Furthermore, in the considered view of this Court, nothing worthwhile has come on record during the cross examination of PW-2 Parkash Kumar, which will impeach his credit worthiness and thus, his testimony to prove the aforesaid Ex.P2 i.e. the sale deed dated 28.5.1982 in question is unimpeachable in nature and can be relied upon. Furthermore, this Court is of the considered view that the aforesaid Ex. P2 i.e. the sale deed dated 28.5.1982 is a registered document and admittedly, the aforesaid Jagga Singh was alive till the filing of the present suit i.e. till dated 23.5.2005 and he had not challenged the execution of the same for more than 20 years and it has not been explained anywhere by the respondent/plaintiff No.2 as to why he has not challenged the registered sale deed dated 28.5.1982 Ex.P2 till the filing of the present suit. Furthermore, this Court is of the considered view that argument raised by the learned counsel for the respondent/defendant to the effect that the aforesaid sale deed in question Ex.P2 is the result of undue influence exerted by aforesaid Jawala Singh on the aforesaid Jagga Singh, the respondent defendant No.2 without free consent and without

consideration is not sustainable in view of the fact that the aforesaid sale deed has not been challenged by the aforesaid Jagga Singh for more than 20 years from the date of its execution i.e. 28.5.1982. Moreover, the aforesaid Ex.P2 i.e. the sale deed in question is the registered document and a presumption is attached to it that the same is executed for a valid sale consideration with free consent and without any undue influence as such and if the plea is raised in this regard by the respondents/defendants, the heavy onus to prove the same is upon them. However, in the considered view of this Court, the respondents/defendants have not produced any evidence either oral or documentary, which will prove that the aforesaid registered sale deed dated 28.5.1982 is the result of undue influence exerted by aforesaid Jawala Singh upon respondent/defendant No.2 Jagga Singh and is not as per his free consent and without valid consideration and, therefore, in view of the reasons advanced as above, the execution of the aforesaid Ex.P-2 i.e. the registered sale deed dated 28.5.1982 is hereby upheld.”

Regarding the Will dated 1.8.2001 the Ld. Lower Appellate Court held that it had been duly proved by the testimony of PW-1 Sadhu Ram who deposed that the Will had been executed by Jawala Singh in his presence and that of Mehardin. The Will had been scribed by Mehardin on the asking of Jawala Singh. Mehardin had read over the Will to Jawala Singh in his presence and Jawala Singh affixed his thumb impression on the Will after admitting it to be correct and thereafter he(Sadhu Ram) and Mehardin put their signatures as attesting witnesses. It was observed that despite sustained cross examination of Sadhu Ram nothing was elicited which would shatter his testimony. The defendants had not been able to prove any suspicious

Will the age of Jawala Singh was mentioned as eighty years whereas in the doctor's report his age was mentioned as hundred years was not material as the person who brought him to the doctor may not have known about his exact age.

The Court also reversed the findings of the trial court on the issue of adverse possession by noticing that except for the bald plea of the defendants there was no documentary evidence on record to prove that defendant No. 1 was in adverse possession of the suit land since 15th June, 1990-1991.

Sh. Sumeet Goel Ld. Counsel for the appellant has again urged the same grounds. He argued that the sale deed was without consideration and hence void. Secondly the will dated 1.8.2001 in favour of the plaintiff is shrouded by suspicious circumstances and cannot be relied upon in the face an earlier registered Will of the deceased Jawala Singh dated 24.05.1990 in favour of Gurmail Singh, Gobind Singh, Balwinder Singh and Darshan Singh and there being no mention in the later will of the earlier will.

There is no merit in the contentions of the Ld. Counsel. The sale deed 28.05.1982 is a registered document. There is a recital in the sale deed that an amount of Rs. 15100/- in cash has been received by the seller Jagga Singh in the presence of the Sub-Registrar. It is also mentioned that a sum of Rs. 5000/- out of the total sale consideration of Rs. 20100/- has not been received as the land is mortgaged with Bhagwan Singh and others and the buyer may pay this amount towards redemption of the mortgage and thereafter take possession. Moreover on the reverse of the sale deed the

Sub-Registrar, Nabha has also certified under his seal that the amount of Rs.

15100/- was received in his presence. In view thereof there can be no doubt about the sale consideration having been passed to Jagga Singh at the time of execution of the sale deed. Moreover as noticed by the Ld. Lower Appellate Court Jagga Singh had not challenged the sale deed for over for over twenty years after the execution of the sale deed on 28.05.1982.

The Lower Appellate Court has also noticed that the Will dated 1.8.2001 in favour of the plaintiff had been duly proved by the testimony of PW-1 Sadhu Ram who deposed that the Will had been executed by Jawala Singh in his presence and that of Mehardin. It was observed that despite sustained cross examination of Sadhu Ram nothing was elicited which would shatter his testimony. Moreover there was no mention of the Will dated 24.05.1990 in the pleadings of the defendants and hence any evidence regarding that could not looked into.

Findings of fact have been recorded by the Ld. Lower Appellate Court in favour of the plaintiff. It has not been shown as to how those findings are perverse or against the evidence on record. No substantial question of law arises for decision in this case.

Accordingly, there is no merit in the appeal and the same is dismissed.

February 21, 2019
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No