

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

**RSA No.1723 of 2017 (O&M)
Date of Decision.25.03.2019**

Jasbir Singh and others

...Appellants

Vs

Bhagwanti (since deceased) through LRs and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ravish Bansal, Advocate and
Mr. Jatinder Singla, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

C.M. No.4145-C of 2017

The application for impleading the legal representatives of deceased-appellant No.6 is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record for the purpose of adjudication of the present appeal.

RSA No.1723 of 2017

The present regular second appeal is directed against the concurrent finding of fact whereby suit of the appellants-plaintiffs and counter-claim of the respondents-defendants has been dismissed by the trial Court and affirmed in appeal.

The appellants-plaintiffs sought declaration and permanent injunction to be owners in equal share to the extent of 1/4th share in the land measuring 32 kanals in respect of Khewat No.291 Khatauni No.554, 555, Khasra No.30//5/8-0, 24//13/8-0, 18/8-0, 20/8-0 and half share in the land measuring 44 kanals 9 marlas bearing Khewat No.292, Khatauni No.556, Khasra No.24//11/8-0, 12/8-0,

19/8-0, 30//7/8-0, 13/3/4-9, 24//22/8-0 by laying challenge to the sale deed dated 23.5.1996 alleged to be executed by Kandhara Singh in favour of defendant No.1 and injunction restraining defendants from alienation of the suit property on the premise that one Brij Lal obtained a sale deed dated 23.5.1996 in favour of his wife Bhagwanti without any consideration and also executed a mortgage deed dated 8.6.1990 in favour of Bhagwanti and another mortgage deed dated 23.11.1995 in favour of defendants No.2 to 4, nephews of Brij Lal. During his life time, Kandhara Singh remained in possession of the suit land and after his death, plaintiffs were in actual physical and cultivating possession of the land in dispute being owners. Plaintiffs being illiterate persons had no knowledge of the revenue record but Brij Lal without intimation to the plaintiffs got their names entered in the revenue record. Plaintiffs got the knowledge only about 3-4 months back at the time of filing of suit in 2007.

Defendants filed the written statement and opposed the suit and also set up a counter-claim claiming damages to the tune of ₹1,30,000/-. It was alleged that Kandhara Singh, predecessor-in-interest of the plaintiffs mortgaged the land with possession measuring 11 kanals 2 marlas i.e. 1/4th share of 44 kanals 9 marlas and another mortgage deed by handing over possession.

Since the parties were at variance, the trial Court framed as many as eight issues including the issue if relief.

Plaintiffs in support of pleadings examined three witnesses whereas defendants examined five witnesses and brought on record various documents.

Mr. Ravish Bansal, learned counsel appearing on behalf of the appellants submitted that the Courts below have committed illegality and perversity in noticing the fact that the sale deed was without consideration and possession. Possession remained with the plaintiffs. Kandhara Singh died on 17.03.2000 and the appellants-plaintiffs acquired the knowledge in the year 2007, though during the pendency of the suit vide Ex.P3 khasra girdawari was corrected in their favour. In this regard, there is categorical assertion in para 4 of the plaint. In fact, Bhagwanti, defendant No.1 and her husband Brij Lal including defendants No.2 to 4 and their father Suraj Bhan had relations with Kandhara Singh, who was a person of simpleton nature. The Courts below could not have dismissed the suit on the ground of limitation.

I am afraid aforementioned arguments of learned counsel for the appellants are not sustainable, for, during entire period from the date of sale deed till death of Kandhara Singh did not challenge the sale deed. No explanation has come forth for not challenging the sale deed on the basis of fraud and misrepresentation. At the best, suit could have been filed within three years but as noticed above was filed in the year 2007. No sane person would execute sale deed without consideration. It is, thus, not believable that plaintiffs had still been in possession. Sale deed was of 1/4th share out of 32 kanals. In such circumstances, only share of Kandhara Singh had been sold. The mortgage deed dated 23.11.1995 Ex.P5 is a registered mortgage deed too. Execution of the sale deed has been proved through attesting witnesses. In such circumstances, plaintiffs

miserably failed to prove on record lack of consideration. One line in the cross-examination of DW2 will not prove possession of plaintiffs. The pith and substance which is derived from the judgments and decrees and the record is that plaintiffs have not been able to believe contents of mortgage deed.

In view of such circumstances, remedy lied elsewhere but not in the manner and mode as sought. I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 25, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No