

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1378 of 2018 (O&M)
Date of Decision : 18.10.2019

Sukhwant Kaur and another

.....Appellants

Versus

Satwant Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Harsh Aggarwal, Advocate for the appellants.

Mr. Harneet Singh Oberoi, Advocate
for the caveator-respondent.

ARUN PALLI, J. (Oral)

The suit filed by the plaintiffs-appellants was dismissed by the trial Court vide judgment and decree dated 19.05.2014 and as even the appeal preferred against the said decree failed and was dismissed on 31.05.2017, they are before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiffs prayed for a decree for possession for a land measuring 50 kanals 6 marlas i.e. land measuring 48 kanals 3 marlas, $\frac{2}{3}$ rd share out of $\frac{1}{4}$ th share in an another khewat which comes to 19 marlas, and another $\frac{2}{3}$ rd share out of $\frac{1}{4}$ th share, which comes to 1 kanal 4 marlas comprised in separate khasra numbers as depicted in cause title of the plaint. A decree for injunction was also claimed restraining the defendants from causing any interference in the possession of the plaintiffs over the suit land.

In brief, the case set out by the plaintiffs was that Kartar Singh son of Gurdial Singh was owner in possession of a land measuring 50 kanals 6 marlas, situated in village Bakipur, Tehsil and District Tarn Taran. Kartar Singh died and was succeeded to by his three daughters i.e. plaintiffs and defendant No.1. Thus, they were entitled to succeed his estate in equal share. Post death of Kartar Singh, Hardev Singh husband of Satwant Kaur-defendant No.1, cultivated the suit land and was paying lease money to the plaintiffs in terms of their share. But, about a year ago the defendants stopped paying the lease amount to the plaintiffs and rather claimed to have purchased the suit property from late Kartar Singh. Kartar Singh never executed any sale deed in favour of defendant No.1 and the sale deed, if any, was a result of forgery and fabrication, and thus, liable to be set aside.

In the written statement filed by defendant No.1 ownership of Kartar Singh was admitted. It was denied that post his death the suit property was inherited by the plaintiffs. Rather, Kartar Singh had sold the suit property to defendant No.1, vide sale deed dated 09.03.1983, for a valuable consideration whereupon, defendant No.1 was even put in possession of the suit land. It was denied that after death of Kartar Singh the defendants ever paid any rent/share to the plaintiffs. Thus, the suit was liable to be dismissed.

Upon a consideration of the matter in issue and the evidence on record both the Courts concurrently concluded that evidence led by the defendants conclusively proved the due execution of the sale deed dated 09.03.1983 (Ex.D1) in favour of Satwant Kaur-defendant No.1 by late

Kartar Singh. It was not disputed either that Kartar Singh had died on 13.01.2002, and thus, remained alive for a period of 19 years post execution of the sale deed dated 09.03.1983. Kartar Singh never chose to question the veracity of the sale deed executed in favour of defendant No.1, during his life time. In fact, pursuant to the sale deed Ex.D1, the suit property was mutated in favour of defendant No.1 on 09.02.1988. The entries qua the ownership and possession were accordingly incorporated in the record of rights in favour of defendant No.1. Significantly, even after the change was affected in the jamabandis in favour of defendant No.1 Kartar Singh was alive for over 10 years but did not question the correctness of the revenue record. Undoubtedly, the plaintiffs had set up a plea of fraud to impugn the sale deed in question but they failed to lead any evidence to substantiate the said plea. Therefore, at the time of death of Kartar Singh on 13.01.2002, he was not the owner of the suit property for, the title therein stood already transferred in favour of defendant No.1. Hence, the claim of the plaintiffs that they succeeded to the estate of the deceased was wholly mis-conceived. Not just that the suit was also dismissed being time barred as the sale deed dated 09.03.1983, was challenged, vide the present suit filed on 07.05.2010 i.e. after 27 years. Not only that even post death of Kartar Singh on 13.01.2002, for a period of over 8 years the plaintiffs never chose to claim any inheritance in the estate of the deceased. The plea that post death of Kartar Singh, husband of defendant No.1 i.e. Hardev Singh, was in possession of the suit property and had been paying lease amount to the plaintiffs also remained unproved for lack of evidence. The argument

advanced by learned counsel for the appellant that sale deed dated 09.03.1983, was assailed being a result of fraud but yet the trial Court failed to frame a specific issue in this regard lacks conviction and cannot be countenanced. Firstly nothing stopped the plaintiffs to claim a specific issue, in terms of their pleadings, when the issues were framed. Even otherwise, the entire matter being at large before the Court, they could always lead evidence to substantiate the alleged plea of fraud. However, no evidence was led by the plaintiffs in this regard. Therefore, the only and the inevitable conclusion the Courts could reach: plaintiffs failed to prove their claim.

On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusions recorded by both the Courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

18.10.2019

*Manoj Bhutani***(ARUN PALLI)****JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No