

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

Date of Decision: May 10, 2019

1. **RSA No.3181 of 2017 (O&M)**

Smt.Kammo Bai (deceased) & others

...Appellants

Versus

Jangir Singh & others

...Respondents

2. **RSA No.2287 of 2017 (O&M)**

Smt.Kammo Bai (deceased) & others

...Appellants

Versus

Jangir Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Ms. Kiranjeet Kaur, Advocate for
Mr. Harpreet Singh Jakhal, Advocate,
for the appellants in both the cases.

AMIT RAWAL, J.

This order of mine shall dispose of two Regular Second Appeals bearing No.3181 and 2287 of 2017 as the common question of fact and law is involved.

RSA No.3181 of 2017 is arising out of decision of Civil Suit No.310 of 2007 titled as “Jangir Singh & others Versus Smt.Kammo Bai (deceased) through L.Rs & others for declaration (hereinafter referred as “Suit No.1”), whereas RSA No.2287 of 2017 is arising out of decision of Civil Suit No.92 of 2008 titled as “Smt.Kammo Bai & another Versus Jangir Singh & others for declaration (hereinafter called as “Suit No.2”).

In Suit No.2, the plaintiffs sought the relief of declaration

notwithstanding anything contained contrary in the impugned sale deed 15.12.1995 executed by plaintiff No.1 in favour of the defendants as plaintiff continued to be owners in possession of land measuring 112 kanals 15 marlas, whereas in the first suit, the plaintiffs sought relief of declaration notwithstanding anything contained contrary in the revenue record, the plaintiffs as owners in equal share of land measuring 12 kanals on the basis of the sale deed 15.12.1995 with decree of possession of the suit land with consequential relief of permanent injunction seeking restraint against defendant No.1 from alienating and transferring the land.

The facts are common and, therefore, taken from RSA No.3181 of 2017.

Plaintiffs alleged that Kammo Bai defendant No.1 was having 1/11 share measuring 38 kanals 5 marlas out of total land measuring 420 kanals 14 marlas. Vide sale deed dated 15.12.1995, she sold land measuring 12 kanals in favour of the plaintiffs for a valuable consideration acknowledging the possession of the plaintiffs. Mutation bearing No.1914 in this regard was sanctioned and carried in the jamabandi for the year 1997-98. Accordingly, the share of Kammo Bai was reduced to 525 shares from 765 as she had, vide sale deed, ibid, sold 240 shares. However, prior to the aforementioned sale deed, both the parties, i.e., the plaintiffs and defendant Nos.1 and 2 instituted an application for partition of the land in the Court of Tehsildar-cum-Assistant Collector Grade-1, which was decided on 18.06.1998. However, the sold land of 12 kanals which included the share of defendant No.1, but the partition order did not notice her 240 shares subject matter of the sale deed. Plaintiffs had already sown paddy crop for Kharif 2007. By taking the undue advantage of the entry in the

revenue record, defendant No.1 illegally trespassed and forcibly occupied the same with the help of her husband. Plaintiffs requested defendant No.1 to vacate the same, but she refused to adhere the request and came to know that defendant No.1, during the pendency of the partition proceedings, sold the land, but the same was not reflected in the revenue record nor the possession was handed over. In order to cause wrongful loss to the plaintiffs, defendant No.1 mischievously and with a purpose to defeat the rights of the plaintiffs also mortgaged the land measuring 11 kanals 14 marlas, i.e., 1/3 share of land measuring 35 kanals 2 marlas including the suit land while taking loan of ₹1,00,000/- from defendant No.3-bank.

Defendant Nos.1 and 2 opposed the suit by raising numerous preliminary objections and alleged that the predecessors of the plaintiffs, namely, Lehna Singh, Pathana Singh, Bagha Singh sons of Tikka Singh son of Gurdit Singh mortgaged with possession their land measuring 46 kanals 2 marlas vide registered mortgage deed dated 28.04.1964 comprising of various khasra numbers in favour of Roshan Lal son of Kalu Ram for a sum of ₹ 2,000/-. Roshan Lal further mortgaged the aforementioned land in favour of his father Kalu Ram son of Sardari Lal through registered mortgage deed dated 09.09.1968 and Kalu Ram further mortgaged the said land in favour of defendant No.1 through mortgage deed dated 05.10.1982 and delivered the actual possession and till then her possession was continuous. Since no steps were taken to redeem the land, defendant No.1 had become owner of the suit property.

Plaintiffs on 15.12.1995 executed an affidavit regarding the land measuring 32 kanals comprised of Rect.No.34, Killa No.4(5-2), 5/1(8-0), 6/2(3-16), 7(7-12), 14(3-12), 15/1(7-0), 16/2(7-2), 25(3-18) admitting

ownership and possession of defendant Nos.1 and 2, but the plaintiffs kept mum for a period of 12 years and supported the order of partition proceedings. Prior to the institution of the suit, the impugned sale deed did not see the light of the day. Jurisdiction of the Civil Court under Section 158 of the Punjab Land Revenue Act in respect of the challenge to the order of the Collector was barred.

Defendant No.3 filed a separate written statement and raised the objection qua maintainability of the suit in view of the provisions of Section 79 of the Punjab Co-operative Societies Act. The same plea qua protecting the possession was taken in the second suit.

Since the parties were at variance, the trial Court in both the suits framed the following issues:-

Suit No.1

“1. whether the plaintiffs are entitled to declaration as prayed for? OPP

2. Whether partition order dated 18.6.1998 is illegal, null and void? OPP

3. Whether any mandate is liable to be issued directing the defendant no.1 to get the suit land redeemed from the defendant no.3 and hand over the possession of the plaintiff? OPP

4. Whether the defendant no.1 is liable to be restrained from alienating the suit property? OPP

5. Whether suit is not maintainable in the present form? OPD

6. Whether the plaintiffs have no locus standi and cause of action to file the suit? OPD

7. Relief.”

Suit No.2

“1. Whether sale deed dated 15.12.1995 in favour of defendants as well as subsequent entries in the revenue record

are illegal, null & void, arbitrary and not binding upon the rights of plaintiffs? OPP

2. *Whether the plaintiffs are entitled to declaration as prayed for? OPP*

3. *Whether the plaintiffs are entitled to relief of permanent injunction as prayed for? OPP*

4. *Whether the suit is within limitation? OPD*

5. *Whether the plaintiffs have no cause of action or locus standi to file the present suit? OPD*

6. *Whether the suit is not maintainable in the present form? OPD*

7. *Whether the plaintiffs are guilty of concealment of material facts? If so, its effect? OPD*

8. *Relief.”*

The trial Court, vide judgment and decree dated 17.11.2014, decreed Suit No.1 and directed defendant No.1 to deliver the possession of the suit land within a period of three months and vide judgment and decree dated 12.02.105 dismissed Suit No.2. Kammo Bai filed the appeals in both the cases, but were tried by the same Additional District Judge, Fazilka. Appeal in first Suit was 420 of 2014, whereas in Suit No.2 was 127 of 2015. Both the appeals have been dismissed. In essence, the judgment and decree of the trial Court in Suit No.1 remained intact and, therefore, two appeals have been filed.

Ms. Kiranjeet Kaur, Advocate for Mr.Harpreet Singh Jakhal, learned counsel for the appellant submitted that the judgments and decrees of the courts below are not sustainable in the eyes of law as it has been wrongly observed that the sale deed dated 15.12.1995 being a registered document carried a presumption of truth. PW-6 Hoshiar Singh, who was plaintiff in Suit No.1, admitted that Patwari corrected the khasra girdawari after inspecting the spot, whereas previous to that khasra girdawari stood in

the name of predecessors of the appellants.

Jurisdiction of the Civil Court as per the provisions of Section 158 of the Act was clearly ousted. The original sale deed was not produced. PW-1 Ram Sharan Deed Writer also admitted that no sale consideration was passed in his presence and at the time of registration of alleged sale deed and, therefore, the provisions of Section 54 of the Transfer of Property Act did not come in force.

I have heard the learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel as the pith and substance of the decree of the trial Court revealed that the Court had taken into consideration the sale deed for the purpose of determining the share in the partition proceedings and nothing beyond. Appellants have not been able to belie signatures of defendant No.1 on the sale deed, though an effort was made to take the assistance of Anil Kumar Gupta Handwriting Expert for comparing the disputed thumb impressions on the affidavit dated 15.12.1995 Ex.D1. However, during the testimony of PW-2 Dayal Singh, the aforementioned affidavit was not exhibited as Ex.D1, but it was marked on the signature of one Pala Singh marginal witness of the affidavit as alleged to have been attested by him and also Executive Magistrate, Fazilka, but neither Pala Singh or any official from the office of concerned Executive Magistrate was examined, thus, the proof of the signature of the testator pales into in significance.

The original sale deed has been proved as Ex.P1. Each and every page of the same was thumb marked by Kammo Bai. Her thumb impressions were also available in the office of the Registrar. PW-3 Kiran

Bala, a Clerk at Treasury Office, Fazilka was examined to establish that the stamp papers of denomination of ₹ 9,000/- were purchased by none else but Kammo Bai. An entry in the sale register bearing Sr.No.2083 dated 15.12.1995 was made, but the defendants did not allege that at the time of the execution of the affidavit, she was taken to the Treasury Office. It appears to be an attempt to circumvent/overcome her volunteer act resulting into filing of Suit No.2.

The testimony of PW-1 Ram Sharan, who scribed the sale deed, could not be shattered despite extensive cross-examination. In the other suit, i.e., Suit No.2, Kammo Bai did not dispute the photographs affixed on the sale deed. All these factors lead to an irresistible conclusion that Suit No.2 was nothing, but an act of aggrandizement.

For the reasons mentioned above, I do not find any illegality or perversity in the findings under challenge. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeals are dismissed.

May 10, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No