

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

**RSA No. 4492 of 2018 (O&M)**

Date of decision : September 19, 2019

Balwinder Singh

.....Appellant

Versus

Sukhpreet Kaur and others

....Respondents

**RSA No. 5082 of 2018 (O&M)**

Gurdeep Singh alias Dalip Singh alias Deep Singh through LRs

.....Appellants

Versus

Sukhpreet Kaur and another

....Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. P.S. Jammu, Advocate  
for the appellant.

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**LISA GILL, J.**

This judgment shall dispose of RSA Nos. 4492 and 5082 of 2018 arising out of common judgment dated 20.03.2014 passed by the learned Additional Civil Judge (Senior Division), Ellenabad after consolidation of two suits filed by the appellants – Balwinder Singh and Gurdeep Singh alias Dalip Singh alias Deep Singh.

Both the appellants are aggrieved of judgment and decree dated 20.03.2014 passed by the learned Additional Civil Judge (Senior Division), Ellenabad wherein their respective suits for declaration have been dismissed as well as judgment and decree dated 22.02.2018 passed by the learned Additional District Judge, Sirsa, whereby their appeals have been dismissed.

At the outset, it is necessary to delineate the admitted relationship between the parties. Gurdeep Singh alias Dalip Singh alias Deep Singh son of Mehala Singh is the father of Balwinder Singh. Defendant No. 1 – Sukhpreet Kaur is the daughter-in-law of Balwinder Singh and grand daughter-in-law of Gurdeep Singh being the wife of

Chamkaur Singh son of Balwinder Singh. Defendant No. 2 - Dhanmeet kaur is the minor daughter of Sukhpreet Kaur and Chamkaur Singh. Civil Suit No. 656-C of 2008 was filed by Balwinder Singh seeking a declaration to the effect that sale deed No. 1090 dated 14.07.2008 executed by Gurdeep Singh arrayed as defendant No. 3 in the said suit in favour of Sukhpreet Kaur and Dhanmeet Kaur (defendants No. 1 and 2) is illegal, null, void, without jurisdiction, legal necessity, consideration and is liable to be set aside being based upon fraud and coercion. It is pleaded that the property in question is joint Hindu Family Coparcenary property of the plaintiff, defendant No. 3 – Gurdeep Singh and proforma defendant - Makhan Singh in Civil Suit No. 656-C of 2008. Consequential relief of permanent injunction for restraining defendants No. 1 and 2 from alienating the suit property or from interfering in the possession of the plaintiffs and proforma defendants is sought and in the alternate if the plaintiff and proforma defendants were not found in possession, prayer for possession to the extent of their share was sought. It is pleaded that suit property measuring 64 kanals 7 marlas was purchased out of the income of ancestral property held by Mehla Singh in favour of defendant No. 3 – Gurdeep Singh. A dispute, it is pleaded, arose between Sukhpreet Kaur and her husband Chamkaur Singh - son of the plaintiff – Balwinder Singh. Petition under Section 13 of the Hindu Marriage Act was filed. Registered sale deed No. 1090 dated 14.07.2008 executed by defendant No. 3 in favour of defendants No. 1 and 2 is claimed to be illegal, null and void as the sale was without consideration. Moreover, defendant No. 3 could not have sold the suit property as it is joint coparcenary property. It is further pleaded that defendants – Sukhpreet Kaur and daughter Dhanmeet Kaur colluded with defendant No. 3 -

Gurdeep Singh merely to deprive the plaintiff Balwinder Singh and his real brother - Makhan Singh proforma defendant of their right in the coparcenary property. The said deed in any case is stated to be without any legal necessity or consideration and a sham transaction. Despite request, the defendants made no efforts to have sale deed dated 14.07.2008 cancelled, therefore, the suit was filed.

Defendants – Sukhpreet Kaur and Dhanmeet Kaur resisted the suit. Various preliminary objections were taken in the written statement. Suit property is stated to be the self-acquired property of defendant No. 3, who had every right to transfer the same. Sale deed, it is stated, was registered in favour of defendant No. 1 for consideration. Requisite stamp duty was appended. The matrimonial dispute between Sukhpreet Kaur and Chamkaur Singh had no bearing on the sale of the suit land by defendant No. 3.

Defendant No. 3 – Gurdeep Singh filed a separate written statement taking various preliminary objections. He claimed the suit property to be a self acquired property. It is denied that the property was joint coparcenary property or purchased out of income of ancestral property held by Mehla Singh. It is further stated that sale deed dated 14.07.2008 was executed for consideration of ₹36,20,000/- to defendants - Sukhpreet Kaur and her daughter. The sale consideration is acknowledged to have been received by him. Separate written statement was filed by defendant No. 4 – Makhan Singh (brother of Balwinder Singh) to the effect that sale deed dated 14.07.2018 is legal, valid and land is rightly sold by defendant No. 3 – Gurdeep Singh in favour of defendants No. 1 and 2.

Thereafter, Civil Suit No. 788-C of 2011 was instituted by

Gurdeep Singh alias Dalip Singh seeking declaration that sale deed dated 14.07.2008 is a sham transaction alongwith the consequential relief of permanent injunction while pleading that parties to the suit are closely related to each other. Matrimonial relationship between Chamkaur Singh and Sukhpreet Kaur became strained and they started living separately. Plaintiff – Gurdeep Singh claimed to be mentally disturbed because of this reason. He was restless as he wanted to settle Sukhpreet Kaur wife of his grandson – Chamkaur Singh at village Kariwala in the house of his grandson. Under immense mental pressure and undue influence of the relatives and parents of defendant No. 1 - Sukhpreet Kaur, sale deed was executed in her favour and in favour of her child. Sale deed, it is stated, was executed without any sale consideration, legal necessity and without consent of Gurdeep Singh. Sale deed dated 14.07.2008 was claimed to be a sham transaction and actual physical possession of the suit property was never delivered to Sukhpreet Kaur and her daughter. Price of the land is stated much more than ₹36,20,000/-.

Defendants - Sukhpreet Kaur and her daughter resisted the suit and claimed that once Gurdeep Singh had filed a written statement admitting the claim of Sukhpreet Kaur and her daughter, he cannot back track and take a separate stand. Defendant No. 4 in the said suit filed his separate written statement seeking the suit to be decreed. Defendant No. 3 adopted the written statement filed by defendant No. 4.

At this stage, it is to be noted that applications for amendment of the written statement by Gurdeep Singh in Civil Suit No. 656-C/2008 as well as on behalf of Makhan Singh to amend the written statement were moved. The said applications were, however, dismissed vide orders dated

04.12.2013 and 21.01.2014.

Following issues in Civil Suit No. 656-C of 2008 were framed by the learned trial Court on the basis of the pleading:-

1. Whether the plaintiff is entitled to declaration, as prayed for?OPP
2. Whether the suit of the plaintiff is not maintainable in the present form?OPD
3. Whether the plaintiff has concealed and suppressed the true and material facts from the court? OPD.
4. Whether the present suit is time barred? OPD.
5. Relief.

Following issues in Civil Suit No. 788-C of 2011 were framed by the learned trial Court on the basis of the pleading:-

1. Whether the plaintiff is entitled to declaration, as prayed for?OPP
2. Whether the suit of the plaintiff is not maintainable in the present form?OPD
3. Relief.

Evidence was led by both the parties.

Learned trial Court dismissed both the suits while observing that the plaintiffs failed to prove their case on the basis of the evidence on record. Appeals were preferred by both Balwinder Singh and Gurdeep Singh. Learned Additional District Judge, Sirsa vide common judgment dated 22.02.2018 dismissed the appeals filed by Gurdeep Singh as well as Balwinder Singh. Aggrieved therefrom, present appeals have been filed.

Learned counsel for the appellants argues that both the learned Courts below have grossly erred on facts and in law in dismissing the respective suits filed by the appellants. It is contended that it is duly proved on record that the property in question is the co-parcenary ancestral property

and the findings of both the learned Courts below are riddled with infirmities. It is proved on record that there was a matrimonial dispute between Chamkaur Singh (Chamkaur Singh is son of Balwinder Singh and grand son of Gurdeep Singh) and his wife and a divorce petition was filed in the year 2007 by Chamkaur Singh and the said petition was allowed on 22.09.2010 on the basis of a settlement arrived at between the parties. Learned counsel submits that the evidence on record clearly proves that consideration of Rs.36,20,000/- was never received by the appellant Gurdeep Singh. Respondent no.1 could not prove that she had any source of income to have given the said amount. It is contended that merely because Gurdeep Singh in the written statement filed by him in Civil Suit No.656-C of 2008, filed by Balwinder Singh, admitted the execution of the sale deed besides the property in question being his self-acquired property cannot be held against him, especially in view of the application for amendment of the written statement moved by Gurdeep Singh. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 20.03.2014 passed by the learned Additional Civil Judge (Senior Division), Ellenabad as well as judgment and decree dated 22.02.2018 passed by the learned Additional District Judge, Sirsa be set aside and suits filed by the appellants be decreed throughout.

I have heard learned counsel for the appellant in both the appeals and have gone through the file with their able assistance.

As noted above, there is no dispute regarding the relationship between the parties. Challenge is to the execution of sale deed dated 14.07.2008 by Gurdeep Singh in favour Sukhpreet Kaur wife of Chamkaur Singh and their daughter Dhanmeet Kaur. It is relevant to note that the

plaintiffs have indeed failed to prove on record the nature of the property to be ancestral coparcenary property.

An extremely glaring and relevant fact in this case is that Gurdeep Singh, who was arrayed as defendant No. 3 in Civil Suit No. 656-C of 2008, at the first instance filed a written statement taking a specific stand that the suit property was his self-acquired property and that he had sold the suit property to defendants No. 1 and 2 - Sukhpreet Kaur and Dhanmeet Kaur for consideration of ₹36,20,000/-. He further stated in the written statement that the suit property was also sold for legal necessity i.e. house sold expenses and purchase of some other property. Receipt of consideration amount of ₹36,20,000/- is duly admitted by Gurdeep Singh. It is rightly observed by the learned trial Court that Balwinder Singh in any case has no right to file a civil suit challenging sale deed dated 14.07.2008 and that too during the life time of his father Gurdeep Singh. Filing of the separate suit subsequently by Gurdeep Singh is of no avail to the appellants. Once Gurdeep Singh himself admitted the nature of the suit property to be self-acquired and its sale for consideration of ₹36,20,000/- to Sukhpreet Kaur and Dhanmeet Kaur, it is not open to him to retract from the stand and that too on the ground of societal pressure and mental tension. It is relevant to note at this stage that Gurdeep Singh has not denied the execution of the sale deed dated 14.07.2008 in favour of Sukhpreet Kaur and Dhanmeet Kaur. He has tried to explain the execution of the sale deed to be on the basis of tremendous societal pressure. However, there is not an iota of evidence on record to indicate, much less prove any such societal pressure. Moreover, Gurdeep Singh in his written statement in Civil Suit No. 656-C of 2008 has admitted the receipt of the consideration amount. In such a

situation, it is not open to Gurdeep Singh to take a totally divergent stand by way of a subsequent suit and by way of filing an application for amendment of the written statement filed in the first suit. Makhan Singh - brother of Balwinder Singh and son of Gurdeep Singh also admitted the correctness of the sale deed executed in 2009 but later sought to take a divergent stand. The applications for amendment of the written statement were rightly dismissed. Learned Additional District Judge, Sirsa has rightly observed that Chamkaur Singh had filed petition for divorce on 10.09.2007 and the sale deed was executed on 14.07.2008. Marriage between Chamkaur Singh and Sukhpreet Kaur was dissolved. Sukhpreet Kaur re-married and left the matrimonial home alongwith her daughter, which in fact led the plaintiffs to challenge the sale deed. The parties were very well aware of the nature of the transaction and subsequent changed stand of Gurdeep Singh is clearly not made out.

As discussed in the foregoing paras, the nature of the property to be ancestral coparcenary property is not proved on record. Thus, Gurdeep Singh was well within his rights to have transferred the same. Balwinder Singh, it is rightly held, is not entitled to challenge the same.

Both the learned courts below have rendered concurrent findings of fact against the appellants on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law, is involved for consideration in these appeals, neither is learned counsel for the appellant able to point out any ground for interference as per provisions of Section 41 of the Punjab Courts Act, 1918.

Learned counsel for the appellants is unable to point out any

illegality, infirmity or perversity in impugned judgment and decree dated 20.03.2014 passed by the learned Additional Civil Judge (Senior Division), Ellenabad as well as judgment and decree dated 22.02.2018 passed by the learned Additional District Judge, Sirsa which calls for any interference by this Court in second appeal.

There is a delay of 58 days in filing of RSA No. 5082 of 2018. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing of this appeal has been rendered academic. Application is, accordingly, disposed of.

No other argument has been addressed.

Accordingly, both the appeals are dismissed with no order as to costs.

September 19, 2019  
rts

**(Lisa Gill)**  
**Judge**

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| Whether speaking/reasoned : | Yes/No |
| Whether reportable :        | Yes/No |