

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

RSA No.5231 of 2018 (O&M)

Date of Decision:07.05.2019

Charan Singh

.....Appellant

Versus

Gurpreet Singh and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.S.K.Arora, Advocate
for the appellant.

LISA GILL, J.

Appellant-plaintiff is aggrieved of judgment and decree dated 03.10.2017, passed by the learned Civil Judge (Sr. Division), Ferozepur, as well as judgment and decree dated 19.04.2018, passed by the learned Additional District Judge, Ferozepur.

Brief facts necessary for the adjudication of the case are that the plaintiff (present appellant) filed a suit for declaration to the effect that he is owner in possession of land measuring 7 Kanals 7 Marlas as per jamabandi for the year 2010-11 and that mutation no. 3320 sanctioned on the basis of an alleged sale deed executed by the plaintiff in favour of defendants no.1 to 5, is incorrect, illegal, null & void and inoperative *qua* the plaintiff's rights. Consequential relief of permanent injunction was also sought. It is pleaded that the plaintiff along with others is a co-sharer in joint holding in the land as described in the plaint. Plaintiff claimed to have got 1/ 3rd share in the joint land and as per family partition, he was the owner in exclusive possession of the suit property. Plaintiff denied having ever sold the suit property to any one. It is stated that when the plaintiff applied for a certified

copy of the jamabandi for the year 2010-11 on 13.02.2013, he came to know that mutation no. 3320 regarding sale of the suit land has been wrongly sanctioned on 13.01.2013. The said entry is liable to be set aside as the plaintiff never executed any sale deed or any other document transferring title in favour of defendants no.1 to 5. Plaintiff claimed to be the owner in continuous possession of the suit property with the defendants having no right or title in the suit property. Defendants under the guise of the said mutation wanted to alienate the suit property and want to dispossess the plaintiff. Defendants refused to admit the plaintiff's claim. Hence the suit was filed.

Upon notice, defendants no.1, 2 and 4 appeared and filed their written statement while raising various preliminary objections. It is denied that the plaintiff was the owner in possession of the suit property. Defendants no.1, 2 and 4 stated that plaintiff's father Bhag Singh executed a sale deed dated 08.01.1996 in respect to the suit property measuring 7 Kanals for valuable consideration of Rs. 1,22,500/- in presence of marginal witnesses and the sale deed was registered before the Sub-Registrar. Concealment of material facts was pleaded, inasmuch as, defendants claimed to be *bona fide* purchasers for valuable sale consideration. It is further stated that they were in possession of the suit property since 1996 itself. Dismissal of the suit was prayed for.

Defendant no.5 filed a separate written statement taking similar objections as by defendants no.1, 2 and 4.

Defendant no.6, The Ferozepur Cantt. Primary Cooperative Bank Limited Branch Ferozepur, also resisted the suit. Apart from the

various preliminary objections regarding non-service of a notice as required and absence of power of jurisdiction of the Civil Court, it is stated that plaintiff has not approached the Court with clean hands and has suppressed the material facts. It is stated that the plaintiff had approached the defendant no.6-Bank for obtaining a loan of ₹3,50,000/-, which had been granted after verifying ownership of possession of the plaintiff over the suit property. However, the loan amount was not returned. Dismissal of the suit was prayed for.

Replication was filed by the plaintiff to the written statement of defendant no.5. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to declaration as prayed for?OPP
2. Whether the plaintiff is entitled for permanent injunction as prayed for?OPP
3. Whether the present suit is not maintainable?OPD
4. Whether the plaintiff has concealed the true and material facts from the Court?OPD
5. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances, as well as the evidence on record concluded that the plaintiff had failed to prove his case. Consequently, his suit was dismissed. It is specifically observed that earlier, registered sale deed dated 08.01.1996 was executed by the plaintiff's father Bhag Singh, having valid title to the property, in favour of defendants no.1 to 5 and possession of the suit property was duly delivered to the said defendants at that time itself. The plaintiff, it is noted did not even challenge the said sale deed while choosing to impugn mutation

no. 3320 in isolation.

Appeal filed by the present appellant-plaintiff was also dismissed by the learned Additional District Judge, Ferozepur, vide impugned judgment and decree dated 19.04.2018.

Aggrieved therefrom, present appeal has been filed by the appellant-plaintiff.

Learned counsel for the appellant-plaintiff vehemently argues that both the learned Courts below have ignored the relevant evidence on record and have returned incorrect findings without proper appreciation of the evidence on record besides misreading the evidence on record. It is submitted that in case, sale deed dated 08.01.1996 had indeed been executed, there was nothing to have prevented the said defendants from having sanctioned the mutation in this respect, at an earlier point of time. Moreover, both the learned Courts below have wrongly relied upon the report of the handwriting and finger print expert to conclude that the plaintiff had thumb marked the sale deed as a witness. It is thus prayed that this appeal be allowed and the suit filed by the appellant-plaintiff be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file with his assistance.

Plaintiff-appellant has sought a decree for declaration to the effect that he is the owner in possession of the suit property and that mutation no.3320 sanctioned on 13.01.2013 on the basis of the sale deed dated 08.01.1996, is illegal and inoperative qua his rights. It is not in dispute that sale deed dated 08.01.1996 has not been challenged by the plaintiff. It is borne out from the record that a registered sale deed dated 08.01.1996, Ex.P-

1, was executed by Bhag Singh, who is none other but the father of the plaintiff for valuable consideration in favour of defendants no.1 to 5. It is relevant to note at this stage that the plaintiff-Charan Singh himself is one of the marginal witness of the said sale deed dated 08.01.1996. His thumb impression has been duly proved by Sanjeev Kumar, Handwriting and Finger Print Expert, who testified as DW-4. Report by DW-4 is available on record as Ex.DW4/1. DW-1 has specifically opined that thumb impression on the sale deed dated 08.01.1996 is that of Charan Singh. DW-2-Ranjit Singh, son of deceased-Mukhtiar Singh, Lambardar i.e., the other marginal witness has identified the signatures of his father Mukhtiar Singh on Ex.D-1. DW-3-Robin Sachdeva, Addl.HRC., DC Office, Ferozepur, has also deposed in favour of the execution of the said registered sale deed bearing Wasika no. 5327. It is further to be noticed that there is no mention of the sale deed by the plaintiff in the plaint. Plaintiff while appearing as PW-1 has not specifically denied the execution of the sale deed dated 08.01.1996. In his cross-examination, PW-1 has merely denied having any knowledge regarding execution of the sale deed or receipt of the consideration amount by his father.

However at the same time, plaintiff alleges that the sale deed dated 08.01.1996 is a result of fraud, forgery and misrepresentation. Apart from the fact that the plaintiff has taken a paradoxical stand, there is indeed no evidence on record to prove that sale deed dated 08.01.1996 is a result of fraud, forgery or misrepresentation. The appellant has failed to prove fraud or misrepresentation in accordance with law. Sale deed dated 08.08.1996, it is reiterated, has not been challenged by the plaintiff. Similarly, there is no

merit in the argument raised by learned counsel for the appellant that as the land in question stood mortgaged with the defendant-Bank, it shows that the plaintiff is the owner in possession of the suit property. It has been rightly held by both the learned Courts below that mortgage of the said land by the plaintiff to the defendant-Bank subsequently, cannot affect the title of defendants no.1 to 5 over the suit property. This is so for the reason that the plaintiff could not have mortgaged the land in favour of defendant-Bank after title thereof had been validly conveyed to defendants no.1 to 5 by the plaintiff's father way back in the year 1996.

Learned counsel for the appellant-plaintiff is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record. I do not find any illegality, infirmity or perversity therein, which calls for any interference by this Court.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decrees dated 03.10.2017 and 19.04.2018 passed by the learned Civil Judge (Sr. Division) Ferozepur and learned Additional District Judge, Ferozepur, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

07.05.2019
s.khan

[LISA GILL]
Judge

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