

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

**RSA No.6 of 2018 (O&M)
Date of Decision : 27.11.2019**

Satwant Singh @ Satwinder Singh

.....Appellant

Versus

Hira Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Ramesh Sharma, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the respondents-plaintiffs was decreed by the trial Court vide judgment and decree dated 12.02.2013 and as even the appeal preferred against the said decree failed and was dismissed on 18.11.2016, the appellant-defendant No.6 is 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 declaration that they along with defendant Nos. 7 to 10 were joint owners as co-sharers in a land measuring 5 kanals, out of the total land measuring 14 kanals 13 marlas, comprised in specific khasra numbers as depicted in cause title of the plaint, situated in village Bhikhiwind, Tehsil Patti, District Tarn Taran. Further, the sale deed dated 28.05.1998, registered on 01.06.1998, alleged to have been executed by Kunda Singh through his General Power of Attorney in favour of defendants No.1 to 5, qua the suit land towards the northern side was liable

to be set aside/cancelled being null and void and without consideration. Further, the mutation sanctioned on the basis of the said sale deed was also liable to be set aside. Likewise, sale deed dated 22.02.2010, alleged to have been executed by defendants No.1 to 4, qua a land measuring 3 kanals 7 marlas, out of the total land measuring 14 kanals 13 marlas, comprised in specific numbers, in favour of defendant No.6, was also liable to be cancelled. By way of consequential relief plaintiffs prayed for possession and also injunction.

In the written statement filed by defendant No.6, it was pleaded, inter alia, that plaintiffs had filed the present suit regarding partial land, for, the entire khata consists of a land measuring 159 kanals 8 marlas, whereas the plaintiffs had filed the present suit only for 5 kanals 0 marlas out of the land measuring 14 kanals 13 marlas. It was denied if the plaintiffs No.1 and 2 were legal heirs of Bakhshish Singh. Further, plaintiffs No. 3 to 8 and defendant No.10 were not the legal heirs of Sukha Singh @ Sucha Singh. Further, defendant No.6 set up a plea of *bona fide* purchaser for consideration. It was averred that Kunda Singh through his attorney Jaspal Singh sold the land measuring 5 kanals to Gurmej Singh, Angrej Singh, Gurdev Singh and Baldev Singh equally, vide registered sale deed dated 28.05.1998, and the possession was accordingly delivered. Further, Gurmej Singh, Angrej Singh, Gurdev Singh and Baldev Singh, had sold the land measuring 3 kanals 7 marlas out of the land measuring 14 kanals 13 marlas to Satwinder Singh, vide sale deed dated 22.02.2010. Satwinder Singh had further sold the said land to some other person who

had even constructed a residential house thereupon.

Defendants No.7 to 9 filed a separate written statement and maintained that plaintiffs were never in possession of the suit property and therefore, the suit was not maintainable.

However, defendant No.10 in his written statement conceded the claim of the plaintiffs.

Upon consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that to prove his claim plaintiff-Hira Singh (PW1) appeared as his own witness. The jamabandi for the year 2006-07 (Ex.P1), 1991-92 (Ex.P2) and 1996-97 (Ex.P3), proved that Bakhshish Singh, Sukha Singh @ Sucha Singh and Kunda Singh were owners to the extent of 1/4th share each in the total land measuring 159 kanals 08 marlas. Copy of the death certificates Ex.P4 and Ex.P5 proved that Bakhshish Singh and Joginder Singh had since passed away. Evidence on record showed that the plaintiffs happened to be the LRs of Bakhshish Singh and Sukha Singh @ Sucha Singh and Kunda Singh. This position was further fortified from mutation Nos. 12591, 12918 and 13585 (Ex.P7). The joint ownership of Bakhshish Singh, Sukha Singh @ Sucha Singh and Kunda Singh over a land measuring 39 kanals 17 marlas was also admitted by defendant No.6. There was not any dispute either that out of land measuring 39 kanals 17 marlas deceased Bakhshish Singh, Sukha Singh @ Sucha Singh and Kunda Singh had already sold 34 kanals 17 marlas. Meaning thereby, deceased Bakhshish Singh, Sukha Singh @ Sucha Singh and Kunda Singh were joint owners of the remaining land measuring 5

kanals. Even Jaswant Singh (PW2) testified in his deposition the claim of the plaintiffs. Likewise, Mohan Singh PW3 corroborated the claim of the plaintiffs. Satwinder Singh (DW1) brought on record original Power of Attorney dated 27.05.1998 (Ex.D1), original sale deed dated 22.02.2010 (Ex.D5) and sought to prove the execution of the said documents by examining a scribe and attesting witness. The defendants also examined Ram Partap Singh (DW2) who got the sale deed dated 22.02.2010 executed while appearing on behalf of defendant Satwinder Singh, the attesting witness Sahib Singh (DW3) and Baljinder Singh (DW5). However, an analysis of the sale deed dated 22.02.2010 (Ex.D5) revealed that defendants Gurmej Singh, Angrej Singh, Gurdev Singh and Baldev Singh had sold 3 kanals 7 marlas out of the specific khasra numbers 16//8/1 (4-0), 9 (7-18), 12/2/1 (2-15). But in terms of the recital of the said sale deed consideration of Rs.2,52,000/- was to be paid before the Sub Registrar but endorsement Ex.D6 in circle Mark-B revealed that no payment was made before the Sub Registrar. Meaning thereby, the said sale deed was executed without any consideration and was void. Further, the defendants examined Surat Singh Scribe (DW4) and Narinder Singh (DW7), the attesting witness to prove that Kunda Singh had executed a Power of Attorney in favour of Jaspal Singh vide which he authorized Jaspal Singh to sell, exchange etc. his land situated in H.B. No.137, village Bhikhiwind. However, Jaspal Singh (DW6), the alleged attorney of Kunda Singh, conceded in his cross-examination that he never visited the house and village of Kunda Singh and he was not related to him in any manner, further, he did not know the family

members of Kunda Singh. That being so, it was observed as to why would Kunda Singh execute the Power of Attorney in favour of Jaspal Singh. Therefore, the genuineness of the said document was highly doubtful particularly when Jaspal Singh happened to be the Munim of Gurdev Singh. Not just that, the Power of Attorney was alleged to have been executed by Kunda Singh on 27.05.1998, and on the basis of which Jaspal Singh executed the sale deed qua a land measuring 5 kanals in favour of defendants No.1 to 5. On 28.05.1998 i.e. the very next day which created a doubt if Kunda Singh could execute a Power of Attorney on 27.05.1998, in favour of Jaspal Singh, then why he himself did not execute the sale deed in favour of defendants No.1 to 5 on 28.05.1998. Further, the sale deed dated 28.05.1998 (Ex.D3) showed that sale consideration was already received by the attorney before execution of the sale deed. Further, Surat Singh scribe (DW4) in his testimony clarified that no money was paid before him. Not just that as per Jaspal Singh (DW6) Rs.67,500/- were paid before the Deed Writer whereas Gurdev Singh (DW9) in his statement deposed that no money was paid before the scribe and that was actually paid at the time of execution of the sale deed. Therefore, the documentary as also the oral evidence led by the defendants were not only contradictory but also proved that no payment was made before or at the time of execution of the sale deed. Nothing was brought on record to show if the sale consideration was ever passed on to Kunda Singh from Jaspal Singh. In the wake of the evidence on record, the only and the inevitable conclusion that could be reached: Kunda Singh never executed any Power of Attorney in favour of

Jaspal Singh, and therefore, sale deed executed by him as Attorney of Kunda Singh qua a land measuring 5 kanals beyond the share of Kunda Singh and without consideration was illegal and void. Likewise, the sale deed dated 22.02.2010, executed by defendants No.1 to 4, in favour of defendant No.6, was also void being without consideration. Defendant No.6 despite being fully conscious of the share of Kunda Singh in the suit land, purchased the same from defendants No.1 to 4, and thus, he could not claim to be the *bona fide* purchaser for consideration. Apparently, late Bakhshish Singh, Sukha Singh @ Sucha Singh and Kunda Singh were joint owners of the suit property measuring 5 kanals and post their death plaintiffs and defendants No.7 to 10 being their LRs were co-sharers to the extent of their respective share.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at 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.

27.11.2019

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

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No