

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

RSA No.5004 of 2018 (O&M)

Date of Decision: 16.07.2019

Surinder Kaur and others

.....Appellants

Vs.

Sukhdeep Singh and Others

.....Respondents

CORAM: HON'BLE MR.JUSTICE DR. RAVI RANJAN

Present:- Mr.Veneet Sharma, Advocate, for the appellants.

Mr.Chetan Bansal, Advocate, for the respondents.

DR. RAVI RANJAN, J. (Oral Judgment)

This appeal by defendants-appellants is directed against the judgment and decree dated 12.03.2018 passed by the Additional District Judge, Amritsar in Civil Appeal No.285 of 2016, by which their appeal has been dismissed by the first appellate Court.

Before proceeding to consider the appeal on its merit, let it be noted that it appears from the appeal form/opening sheet filed in the present appeal that the appellants have preferred appeal against the judgment and decree passed by the first appellate Court in Appeal No.285 of 2016 whereas the impugned decree attached with the impugned judgment is with respect to Appeal No.192 of 2016. It would be further pertinent to be noted that against the judgment and decree passed by the trial Court, one appeal was preferred by the plaintiff-respondent, v.i.z., Sukhdeep Singh which was numbered as Civil Appeal No.192 of 2016 before the first appellate Court.

Another appeal was filed by the defendants/appellants challenging the finding of the trial Court holding the plaintiff to be owner of the suit

property in view of the sale deed dated 31.12 1997 executed by original owner late Mela Singh in his favour though the suit filed for recovery of possession was ultimately dismissed by the trial Court on the ground that some of the defendants, who were tenants, can only be evicted in a suit filed for eviction of the tenants before the Revenue/Rent Authorities. This appeal was numbered as Civil Appeal No.285 of 2016.

As discussed above, in the opening sheet of the appeal, the appellants have stated that they have preferred the appeal against the judgment and decree passed in the civil appeal by the first appellate Court in Civil Appeal No.285 of 2016 whereas for the purpose of challenging the same, the decree attached is one with regard to the Civil Appeal No.192 of 2016.

Thus, one thing is quite clear from the above that the appellants have not preferred appeal against the judgment and decree passed in both the appeals which they could not have done also by preferring a single Regular Second Appeal. They have challenged the judgment and decree passed in the only one appeal. However, this is also a fact that both the appeals were decided by a common judgment delivered by the first appellate Court dated 12.03.2018 but the decrees are different in both the appeals.

Coming to the merit of the case, the factual matrix which would be necessary for consideration of *lis* between the parties stands enumerated as under:-

The plaintiffs/respondents instituted a suit for recovery of possession stating in the plaint that one Mela Singh was the owner of the suit property which stands fully described in the plaint which is a house

was nephew of aforesaid Mela Singh (since deceased) and during his life time, with his free will and full senses, the aforesaid Mela Singh transferred the suit property through a registered sale deed dated 31.12 1997 and put the plaintiff in possession thereof. The aforesaid Mela Singh, being the uncle, i.e., the full brother of the father of plaintiff, v.i.z., Kaka Singh, was allowed to reside in the house till his death in the year 2010 and his possession was permissive/licensee whereas the actual possession remained with the plaintiff/respondent. It is further stated that the plaintiff/respondent started paying electricity, water, sewerage bills to the respective departments. However, subsequently, the aforesaid Mela Singh i.e. the uncle and the vendor of the plaintiff, filed a suit No.635 of 2006 against the plaintiff for permanent injunction. During the pendency of the suit, Mela Singh died and the defendant/appellant No.1 Surinder Kaur filed a petition for her substitution in the matter on two grounds. First is that, she was daughter of the plaintiff Mela Singh and secondly on the basis of a registered Will executed in her favour by Mela Singh on 20.06.2007. However, the suit was dismissed on 16.07.2013. Immediately after the dismissal of the aforesaid suit, taking advantage of the fact that the plaintiff was in custody in connection with a falsely implicated murder case, defendants No.1 to 3 took forcible possession of the suit property and the defendants No.4 to 6 started residing in the suit property since 16.07.2013. Hence, the suit was filed for recovery of possession.

The defendants/appellants No.1 to 3 appeared and contested the suit by filing written statement questioning the sale deed executed by Mela Singh on the ground of the same being result of fraud played by the plaintiff. The aforesaid defendants further averred that Mela Singh never

delivered possession of the property in favour of the plaintiff till his death and, on his death, the defendants No.1 to 3 came in possession over the suit property being owner thereof in view of the registered Will executed by late Mela Singh in favour of defendant-Surinder Kaur. The fact that suit for permanent injunction filed by Mela Singh in which lateron defendant No.1 Surinder Kaur was substituted was eventually dismissed by the Court, stands admitted by the aforesaid defendant.

The defendants No.4 and 5 filed their written statement supporting the stand taken by the respondents No.1 to 3. They further stated that respondent No.4 is a tenant in the property on payment of monthly rent of Rs.1000/- whereas, respondent No.5 is a tenant since 1990 at the rental of Rs.500 per month. They claimed that initially they were paying rent to Mela Singh and after his death they started paying rent to defendant No.1-Surinder Kaur who is owner of the property on the basis of Will dated 20.06.2007.

On consideration of rival pleadings, following issues were framed:

1. Whether plaintiff is entitled to decree for possession as prayed for ? OPP.
2. Whether the plaintiff did not come to the court with clean hands?OPD.
3. Whether instant suit is not maintainable? OPD.
4. Whether plaintiff has got no locus-standi or cause of action to file this suit? OPD.
5. Whether plaintiff's suit is not properly valued for the purpose of court fee and jurisdiction? OPD.
6. Whether plaintiff is entitled to any other relief as prayed? OPP.
7. Whether sale deed dated 31.12.1997 is a forged and fabricated documents? OPD.
8. Relief.

The plaintiff examined himself as PW-1 and brought on record the sale deed concerned as Ex.P1 and *Jamabandi* for the year 2010-11 as Ex.P2. The judgment passed in the suit filed by the Mela Singh against the plaintiff for permanent injunction has also been brought on record as Ex.P8.

The plaintiff examined Sukhwant Kaur as PW2 who also proved on record the certified copy of the sale deed as Ex.P2. The plaintiff also examined Arwinder Singh, Draftsman as PW3, Harjit Kaur, Clerk Sub-Registrar as PW4, Arun Kumar, Deed Writer as PW5, the *Jamabandies* for the year 2000-01 exhibited as Ex.PX, for the year 2005-06 as Ex.PY, 2010-11 as Ex.PZ. As stated above the judgment and decree passed in the suit for permanent injunction instituted by Mela Singh has been brought on record as Ex.PA and Ex.PB respectively.

The defendants, in order to rebut the claim of the plaintiff, examined the defendant No.1 as Surinder Kaur as DW1, Defendant Amarjeet Singh as DW2, defendant Ranjit Singh as DW3 and Bachittar Singh as DW4. One Rajneesh Arora, Advocate has been examined as DW5 and Rohit Kumar, Clerk, Sub-Registrar as DW6.

The trial Court, after appreciation of the materials available on record has held that the registered sale deed executed by Mela Singh in favour of plaintiff-Sukhdeep Singh is genuine and valid and the registered Will dated 20.06.2007 suffers from vice of several suspicions and the same having been executed after the execution of the sale deed by Mela Singh in favour of plaintiff, would be of no value since Mela Singh had already alienated his suit property through the registered sale deed and as such, he had no legal authority to once again dispose it of by way of testamentary

defendant Nos.4 and 5, who are actually tenants and as such, even though the title is in favour of the plaintiff, the tenants cannot be evicted through the process of Civil Court as under law, the tenants can only be evicted in a proper suit filed before the rent authorities. Thus, the suit for recovery of possession was eventually dismissed.

Being aggrieved by the aforesaid dismissal of the suit, the plaintiff-respondent preferred title Appeal No.192 of 2016 before the first appellate Court. The defendants also preferred the Appeal No.285 of 2016 assailing the findings recorded by the trial Court in favour of the plaintiff holding him title holder of the suit property. Both the appeals were heard analogous. The lower appellate Court has allowed the Appeal No.192 of 2016 filed by the plaintiff whereas, the Appeal No.285 of 2016 filed by the defendants has been dismissed.

Interestingly, this regular second appeal has only been preferred against the judgment and decree of one appeal. In ordinary course, the appellants would be required to challenge the judgment and decree by filing two separate regular second appeals as decrees are separate since there were two appeals though judgment is one. Secondly, it is not clear as actually the defendants/appellants have challenged the decree and judgment passed in which of the two appeals. In the opening sheet, where the appellants are required to disclose as to the appeal is being preferred a particular judgment and decree passed in a particular appeal, they have stated Civil Appeal No.285 of 2016 but the impugned decree attached is one which has been passed with respect to Civil Appeal No.192 of 2016.

Now coming to the merit of the case, the plaintiff/respondent, as

of the registered sale deed has examined himself as PW1. He has also examined the Clerk from the office of Sub-Registrar who has proved the certified copy of the sale deed, i.e., Ex.P1 which is registered document entered into the registration book kept by the office of the Sub Registrar. Similarly, the Deed Writer has also been examined as PW-5. That having been done, in my considered opinion, the onus was discharged by the plaintiff for proving the document which is a registered sale deed executed on 31.12.1997 by Mela Singh in favour of the plaintiff which was never challenged by said Mela Singh or the defendant Surinder Kaur by filing a suit till such issue has been considered in the suit filed by the plaintiff for recovery of possession. If the defendant-Surinder Kaur, after such evidence having been led by the plaintiff, was intending to rebut the same then a course was open to her and that was to establish the fraud claimed by her by either proving that Mela Singh has actually not put his signature on the sale deed or Mela Singh has done this under some coercion and further in what manner such fraud was committed by the plaintiff and who were helping or helped him for that. It is well settled proposition that a person claiming fraud has to specifically plead and prove it like a criminal case but nothing to that sort could be done by the defendants. Even in the suit filed for permanent injunction, the said Mela Singh did not utter a single word stating that the sale deed executed by him in favour of the plaintiff of this case was result of fraud and coercion. He simply filed a suit for permanent injunction for restraining the plaintiff from interfering in his peaceful possession over the suit property. Question is, without challenging the registered sale deed he could have done so? The answer would always be in

suit and he appeared and filed his written statement and brought the fact to the notice of the Court that property was sold to him and possession was delivered. The defendant No.1 Surinder Kaur, after being transposed or substituted as a plaintiff in the earlier suit for permanent injunction, did not challenge the sale deed rather she had stated that she is daughter of the deceased Mela Singh and a registered Will has been executed by Mela Singh in her favour. Interestingly, though Mela Singh, according to the defendant No.1-Surinder Kaur, executed a registered Will in her favour on 20.06.2007 and though he died in the year 2010, he never brought this fact to the knowledge of the concerned Court in the suit for permanent injunction filed by him that he had executed a Will in favour of Surinder Kaur. The assertion made by the defendant No.1-Surinder Kaur in the earlier suit, after her substitution, that she is daughter of Mela Singh also stood belied in view of the categorical statement by Mela Singh in his plaint that he has got no legal heir and he is leading his life all alone. In case Mela Singh was of the opinion that the sale deed was result of fraud, it was open for him to file a suit for declaration as such or for setting aside/cancellation of sale deed but he did not do that rather he filed merely a suit for permanent injunction.

The aforesaid discussion puts a question mark on the genuineness of the Will also allegedly executed by Mela Singh in favour of Surinder Kaur. Apart from the above, the said Surinder Kaur while being cross-examined as DW-1 has stated that she does not know whether the Will dated 20.06.2007 is registered or not and whether she accompanied Mela Singh at the time of execution of Will or not. Apart from the above, Surinder Kaur in the present suit has admitted that Mela Singh had no child

daughter of such Mela Singh. Now a question is that if she was not the daughter of Mela Singh then it further raise a suspicion as to why Mela Singh, in the last lag of his life would execute a Will in favour of a stranger though he had stated that he was living all alone and he had already alienated the property by executing a registered sale deed.

Thus, in my considered view there is no valid reason or ground which could be raised by the appellants at the time of hearing disturbing the concurrent finding of the Courts below that after the execution of sale deed, which stands proved and is not a result of fraud and forgery, Mela Singh did not have any right whatsoever in the suit property to bequeath the same in favour of any person. Apart from that, it should also be kept in mind that though the alleged deed of Will was a subsequent document, Mela Singh did not mention anything regarding the execution of sale deed by him or regarding obtaining the sale deed by the plaintiff of this case even by fraud, forgery or coercion.

Now the next issue which would be required to be dealt with in this case would be as to whether, in the aforesaid background of factual matrix, the appellant No.4 could have been evicted or the trial Court has correctly rejected the suit on that score. It is made clear that the second tenant Bachitter Singh, who has been arrayed proforma respondent in this appeal, has not preferred any appeal against the judgment and decree passed by the lower appellate Court. The trial Court has non-suited the appellants holding the aforesaid defendants as tenants and since they are partly in possession, their rights are protected as tenant under the law, the Civil Court would have no jurisdiction to pass an order of eviction. The basis of such

his cross-examination which is quoted as under:-

“ Mela Singh had purchased the property in dispute. I have taken the original sale deed from Mela Singh. The original sale deeds are in my possession. The tenants were in possession of the property in dispute at the time ownership of Mela Singh. The defendants/tenants were evicted by me from the property and I had made repairs and changed the roof of the property. I have not got proved any site plan from the MC authorities for making renovation in the property. After the death of Mela Singh, all the defendants came in possession of property in dispute. Mela Singh had been taking rent from the tenant even after allegedly execution of the sale deed in my favour.”

It would be apparent from the aforesaid that the PW-1 (plaintiff) has stated that tenants were in possession of the property in dispute at the time of ownership of Mela Singh and defendants-tenants were evicted by him from the property. After the death of Mela Singh, the defendants came in possession of the property in dispute. Mela Singh had been taking rent from the tenants even after alleged execution of the sale deed in favour of the plaintiff. On the basis of the aforesaid alleged tenant-defendant No.4 has stated that he has established that he was a tenant of Mela Singh and he remained tenant after his death, thus, he can only be evicted by bringing a proper proceedings before the Rent Authorities. Before proceeding with the matter, let it be noted that during cross-examination, such statement was made by the deponent in answer to a specific question which was put by the counsel of the other side. Now, even assuming the aforesaid, the question would be whether it is established the appellant No.4 was a tenant of Mela

Answer has to be in negative for the reason that his specific case is that after Mela Singh, Surinder Kaur became owner of the property and he was paying rent to the Surinder Kaur who has been held by both the Courts below that she was never an owner in possession of the suit property and title holder is plaintiff due to the sale deed which was executed in his favour by late Mela Singh. It is further surprising that supposing the suit was dismissed by the trial Court against the tenants, how the suit could have been dismissed against Surinder Kaur also even after holding that she was not the owner of the property rather the plaintiff was owner because she was not claiming to be a tenant of Mela Singh. She was claiming to be owner of the property. Even trial Court has accepted that she could not prove her ownership over the disputed property and plaintiff proved that he is title holder of the property. Then, the question was, under what authority she was continuing in possession? The case of the plaintiff is that after dismissal of the earlier suit, she along with others forcibly came into possession of the suit property. Question would be as to how the suit could have at all been dismissed as against defendant-appellant No.1 Surinder Kaur by the trial Court? In my considered view, even on the findings recorded by the trial Court regarding the issue is taken to be correct, in such a situation also, the suit ought to have been allowed at least as against the defendant No.1 and she could have been directed to vacate the premises. That apart, of course during the questions put in cross-examination, the PW-1 has said that the concerned defendants were tenants but actually whether the appellant No.4 was tenant? Whether this specific fact has been admitted anywhere in the cross-examination? Answer is to be in negative. If the defendant/appellant No.4 has to succeed,

the aforesaid Mela Singh and thereafter he continued as tenant under the plaintiff. However, Surinder Kaur being a stranger, which was held even by the trial Court and rightly too as discussed above, it was impossible for him to do so. He failed on this count for the reason that the said Mela Singh, who admittedly was the owner of the property and even according to the defendant/appellant No.4, he put him in his possession as a tenant, has nowhere stated either in his plaint in the earlier suit or in the sale deed or even in the alleged registered Will that there are tenants also and specifically that the defendant No.4 was tenant in the suit property. In such a situation, it would be very difficult to accept the defendant No.4/appellant's claim. Interestingly, the defendant No.1 has not stated in her pleading or evidence that Mela Singh had kept tenants in his property, whereas, the alleged tenants say in his pleading and evidence that Mela Singh had put in possession and thereafter he was paying rent to the new owner i.e., defendant No.1. Admittedly there is no rent note executed by Mela Singh in favour of anyone. The concerned defendant has not been able to bring on record any electricity connection in his name, electric bills showing that he was paying such bills while occupying the premises or any water connection or telephone connection in his name and could not even tell the date, month and year when he put in the tenancy. Amarjeet Singh of course has stated that he took the property in the year 1990 but apart from this bald statement there is no evidence in that regard. The first appellate Court has rightly placed reliance upon the decision of the Hon'ble Apex Court rendered in **Sri Shivaji Balaram Haibatti vs Sri Avinash Maruthi Pawar, 2018 (1) Apex Court Judgments 367 (SC)** holding that even recital in the sale deed

tenant in the absence of any independent evidence adduced by him to prove creation of tenancy and no benefit could be taken by the defendant from such recitals for claiming the status of tenant.

Apart from the above this has also to be kept in mind that there is no challenge to the decree passed in the Appeal No.192 of 2016 in favour of the plaintiff so even if the appeal would have been allowed, the judgment and decree so far concerning the plaintiff's appeal No.192 of 2016 passed by the first Appellate Court would have remained intact.

Having discussed as above, in my considered opinion, the appellants have not been able to raise any cogent ground or substantial question of law warranting interference of this Court in the impugned judgment and decree passed by the first appellate Court.

In the result, this appeal is dismissed. However, there would be no order as to costs.

(DR. RAVI RANJAN)
JUDGE

16.07.2019
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No