

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

111)

RSA no.1119 of 2018 (O&M)
Date of Decision: 15.01.2020

Pargan Singh and another

Versus

...Appellants

Dalip Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Sanjeev Kumar, Advocate, for the appellants.

Amol Rattan Singh, J. (Oral)

By this appeal, the appellants challenge the judgments passed by the learned courts below. The appellants are plaintiffs in a suit by which they sought a decree seeking a declaration to the effect that the sale deed alleged to have been executed by their father, Fauja Singh (respondent no.7), on 02.05.2001, was illegal and void, it being one executed without any consideration passed and was not binding on the plaintiffs.

It was also contended by the appellants that the sale deed executed by Fauja Singh was not executed while he was in a sound disposing mind, he having been given to heavy drinking and addicted to opium.

Upon respondents no.1, 3 and 4 having appeared before the trial court, and having filed a written statement, the following issues were framed by the learned trial court:-

- “1)Whether the plaintiffs are entitled to declaration as prayed for?OPP
- 2) Whether the suit is not maintainable in the present form?OPD
- 3) Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD

- 4) Whether the plaintiffs have got no locus standi to file the present suit?OPD
- 5.) Whether the suit is bad for non-joinder of necessary parties?OPD
- 6) Whether the suit is within limitation?OPP
- 7) Whether the plaintiffs have got no cause of action to file the present suit?OPD
- 8) Relief.”

Upon appraising the evidence, the learned trial court first recorded a finding that, admittedly, the father of the appellants, Fauja Singh, was alive and had never challenged the said sale deed.

It was also found that despite the appellants having examined witnesses who stated that Fauja Singh was given to drinking and was also addicted to opium, the contesting defendants had examined as DW-3 one Deepak Kumar, who was the scribe to the sale deed and had testified to the effect that he had read over and explained it over to the parties in Punjabi.

It was next recorded that the sale deed (Ex.D1) had been executed in favour of Amarjit Singh and Jagir Kaur, who had died, with it contended that they had actually been murdered by the person in whose sons' favour they had executed a will qua the suit land, i.e. respondent-defendant no.2 (with the sons being respondent-defendants no.3 and 4).

PW-1 Kashmir Singh was found to have deposed that he was not present at the time that the sale deed was executed, further admitting however that the parties had appeared before the office of the Tehsildar, with their photographs clicked and the sale deed having been registered by the Tehsildar after satisfying himself regarding the genuineness thereof.

He further deposed that Fauja Singh had also sold other land

and that he was the exclusive owner of the property in dispute. In cross-examination, he was found to have admitted that Fauja Singh was alive and had not instituted any suit qua the suit land.

PW-3 was found to have testified to similar effect, though the first appellant-plaintiff, as PW-4, deposed that his father had filed another suit seeking cancellation of the sale deed, but with him not having led any documentary evidence in that regard.

It was further found by the trial court that no medical evidence whatsoever had been led to show that Fauja Singh was not in a sound disposing mind at the time when he disposed of the suit property.

On the aforesaid findings, it was held that with nothing shown to the effect that Fauja Singh was not in a sound disposing mind at the time of the sale and Fauja Singh himself not having contested the sale at any stage, the suit of the plaintiffs was dismissed.

The learned first appellate court agreed with the findings of the trial court, further observing that Fauja Singh was also not examined as a witness by the appellants-plaintiffs though he was alive, with it also not shown that the suit property was 'joint Hindu family co-parcenary property'.

The first appellant-plaintiff having stated in his cross-examination that he was also the owner of the suit property, he however could not prove that fact by way of any documentary evidence.

An argument was raised before the first appellate court (as has also been raised before this court) that Amarjit Singh and Jagir Kaur, i.e. the

vendees, having taken the benefit of the fact that Fauja Singh was an opium addict and a drunkard and had got executed a sale deed in respect of 8 kanals of land, with defendants Dalip Singh and Gurjit Singh being the brothers of Amarjit Singh, with them having been convicted along with one Dalbir Singh for the murder of Amarjit Singh and Jagir Kaur. The contention therefore was to the effect that with Amarjit Singh having been murdered by his brothers and others, he could not have executed a will in their favour and consequently, the suit land should revert to the appellants-plaintiffs, with them also having “made that request to the defendants”.

The first appellate court, after considering the aforesaid contentions and the fact that there was some contradictions in the statements of the witnesses as regards the passing of sale consideration, eventually however having come to the same conclusion as had the trial court, to the effect that, firstly, as regards Fauja Singh not being in a sound disposing mind at the time of the execution of the sale deed, it was not proved in any manner by any person present at the time that the sale deed was executed, to show that he was under the influence of liquor (and therefore not in sound disposing mind). Hence it was held that even if he was habitual of taking liquor and opium, but with his state of mind at the time of execution of the sale deed not found to be unsound, it could not be held that the sale deed was null and void on that count.

As regards non-passing of sale consideration, it was held by the lower appellate court that with Fauja Singh himself never having challenged

the sale deed on that ground, no other person could not have challenged it.

As regards the question of a Will having been executed in favour of those persons who had been convicted for the murder of the executants of the will, it was held that once Fauja Singh had divested himself of title to the suit land, thereafter the subsequent events would have no bearing on the case.

Hence the first appeal was dismissed.

Before this court, learned counsel for the appellants has essentially raised the same arguments, to the effect that no actual sale consideration was passed between Fauja Singh and his vendees, i.e. Amarjit Singh and Jagir Kaur, towards which end, he also points to the testimony of DW-2, Sadhu Singh, who though in his examination-in-chief had stated that the sale deed had been read over and explained in Punjabi by the scribe to the parties, who had thereafter put their hands to it, with the said witness also having put his hand thereto as such witness, thereafter in his cross-examination, he stated that no monetary transaction on the date of the registration of the sale deed took place, with him however correcting himself to the effect that Rs.1 lac was paid on that date, with the balance amount of Rs.1.5 lacs having been paid at his house two days after the registration of the sale deed.

Thus, learned counsel for the appellants submits that the contradictory testimony of the aforesaid person as regards the exchange of money obviously cannot be relied upon, firstly, for the reason that he

contradicted himself as to the payment on the date of the registration and secondly, there would be no reason for the money to be paid after the transaction had already taken place.

As already noticed, he has also submitted that the vendees of the land having been murdered by the persons in favour of whom they had executed a will, the suit land should revert to the appellants.

Having considered the matter, I find myself unable to agree with the learned counsel for the appellants, for the reason that, firstly, as regards the vendees having been murdered by the beneficiaries of the will stated to have been executed and their accomplice, that would have absolutely no bearing on the transaction by which the vendor of those vendees, i.e. Fauja Singh, had divested himself of the title to the suit land and consequently, whether or not the suit land should go to those who are stated to have murdered the vendees, is not to be gone into by this court, with the legal heirs of Amarjit Singh and Jagir Kaur (vendees) obviously being the persons aggrieved (if so) of any such passing of suit land to any undeserving person.

As regards the question of the sale deed in question being void on account of no consideration having been passed, I agree with the reasoning given by the lower appellate court, to the effect that even if there was a contradiction in the stand taken by the witnesses as to when the consideration was paid (or not paid), the fact of the matter is that Fauja Singh, i.e. the father of the appellants-plaintiffs and the owner and vendor

of the suit land, never chose to challenge the sale deed on that ground, or on the ground that he was not in a sound disposing mind at the time that the sale deed was executed.

Coming then to the issue of whether or not he was of sound disposing mind, I again agree with the reasoning given by the learned courts below, to the effect that neither was any documentary evidence produced to show that he was not of such mind, and even if it is presumed that no such documentary evidence could have been produced, he not being under any medical treatment, the best witness to prove his state of mind would have been Fauja Singh himself, who though chose not to defend the suit as a defendant (or to admit the contents of the plaint), was not even presented as such witness to prove his state of mind before the court.

Further, the reasoning given by the lower appellate court, to the effect that none of the persons who testified to the effect that he (Fauja Singh) was given to drinking and opium addiction, was actually found to be present at the time when the sale deed was executed, to show that he was under the influence of liquor or opium and therefore the sale deed could not be held to be valid on that account, is found to be good reasoning, in my opinion

Nothing has been pointed out to this court that the finding recorded by the learned courts below, that those persons were not present at the spot, is perverse in any manner.

Consequently, in view of the above, I find no merit in the

present appeal, which is dismissed *in limine*.

15.01.2020
vcgarg

(AMOL RATTAN SINGH)
JUDGE
Whether reasoned/speaking: Yes
Whether reportable: Yes