

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

**RSA No.1813 of 2018(O&M)
Date of Decision-27.05.2020**

Kulwinder Singh Bhatti ... Appellant
Versus
Naseeb Kaur and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. D.K. Bhatti, Advocate
for the appellant.

Mr. Amit Jhanji, Advocate
for respondents No.1(d) and 2.

Mrs. Narinder Kaur, respondent No.1(b) in person.

Mr. Charanjit Sharma, Advocate
for respondents No.3 to 7.

RAJ MOHAN SINGH, J.

[1]. Defendant No.1/appellant is in regular second appeal against the concurrent findings recorded by the Courts below.

[2]. Plaintiffs filed a suit for mandatory injunction against the appellant (defendant No.1) and others (his family members), claiming that they are exclusive owners of property No.E-1, New Beant Nagar, Jalandhar. The exclusive ownership claimed by the plaintiffs was based on four registered sale deeds i.e.

1. Sale deed No.8300 dated 16.01.1976, measuring 10 marlas in favour of plaintiff No.1.

2. Sale deed No.10010 dated 19.03.2010, measuring 10 marlas (sale executed by plaintiff No.1 in favour of plaintiff No.2).

3. Sale deed No.2068 dated 01.06.2010, measuring 4 marlas (sale executed by plaintiff No.1 in favour of plaintiff No.2).

4. Sale deed No.33 dated 05.04.2010, measuring 10 marlas (sale executed by plaintiff No.1 in favour of plaintiff No.2).

Plaintiffs claimed that they allowed defendant No.1 and his other family members to use property No.E-1, New Beant Nagar, Jalandhar as a licensee, but later on, because of the misbehaviour of defendant No.1 with plaintiff No.1 and the fact that the defendants had started claiming themselves to be owners of the property and denied the rights of the plaintiffs, licence was orally terminated and thereafter, defendants refused to hand over the vacant possession. It was further pleaded by the plaintiffs that plaintiff No.1 had already disinherited the defendants from the suit property and father of defendant No.1 had also disinherited them during his lifetime.

[3]. Upon notice, the defendants appeared and filed written statement and controverted the facts as mentioned in the plaint. It was stated by the defendants that the suit is not maintainable and the plaintiffs have not come to the Court with clean hands and have suppressed the true and material facts from the Court. On merits, it was submitted that plaintiff No.1 was owner to the extent of 10 marlas, out of the total suit property measuring 40 marlas. It has

been stated by the defendants that the original owners of the entire suit property of 40 marlas (2 kanals) were Hardayal Singh, Prem Singh and Udham Singh. The entire property was purchased by his father late Major B.S. Bhatti. Out of the total land purchased, the sale deed qua 10 marlas of land was got executed in favour of plaintiff No.1 (mother of defendant No.1) on 16.01.1976. For remaining 30 marlas of land, an unregistered sale deed dated 15.02.1997 was executed in favour of late Major B.S. Bhatti. It has been further pleaded by the defendants that plaintiff No.1 had thereafter gifted her 10 marals of land to her husband late Major B.S. Bhatti vide gift deed dated 05.04.1978. It has been further stated that late Major B.S. Bhatti during his lifetime and in sound disposing mind, had executed a Will dated 15.10.2008 in favour of defendant No.1-Kulwinder Singh Bhatti and on the strength of the said Will, defendant No.1 has become absolute owner in possession of the property in question. The sale deeds executed in favour of plaintiff No.2 were stated to be not binding upon the rights of the defendants and said sale deeds were stated to be *sham* transactions. Defendant No.1 and defendants No.3 and 4 on their impleadment have specifically pleaded in the written statements that late Major B.S. Bhatti had a *benami* sale deed dated 15.02.1979 and could not get 30 marlas registered in his favour as the sale deeds were banned in those days and due to his other domestic reasons, he could not get the said 30 marlas registered in his name. Therefore, he was only owner in possession of the property purchased by him. Late Major

B.S. Bhatti was originally owner of total 2 kanals of land which he purchased from Hadayal Singh, Prem Singh and Udham Singh and out of which, he got executed the sale deed directly from the vendors in the name of his wife i.e. plaintiff No.1 for the land measuring 10 marlas vide sale deed dated 16.01.1976. For remaining land measuring 30 kanals, an unregistered sale deed dated 15.02.1979 was executed in favour of Major B.S. Bhatti.

[4]. Thereafter, the plaintiffs filed replication to the written statement.

[5]. After going through the pleadings of the parties, firstly issues were framed on 16.02.2012 and thereafter, upon an application for framing additional issue on 11.05.2015, issues were reframed and both the parties went to trial on the following issues:-

"1. Whether the plaintiff is entitled for the mandatory injunction as prayed for? OPP

2. Whether the suit of the plaintiff is not maintainable? OPD

3(a) Whether the plaintiff No.1 was the owner of the suit property and whether she has any right to execute the alleged sale deed in favour of plaintiff No.2? OPP

3. Whether the plaintiff has not come to the Court with clean hands and suppressing the material facts from the Court? OPD

4. Relief."

[6]. In order to prove their case, the plaintiffs have examined Hardeep Kaur (plaintiff No.2) as PW-1. She has deposed in terms of the plaint and has placed on record the certified copies of the sale

deeds as mentioned above. The sale deeds were exhibited as Exs.P1 to P4. She has further exhibited site plan of the suit property as Ex.P5 and copies of the newspaper cuttings as well as affidavits furnished by the parents of defendant No.1 as Exs.P6 to P8. Plaintiff No.1 Naseeb Kaur has stepped into witness-box as PW-2. She has also exhibited the same documents as exhibited by PW-1. Certified copies of TSI certificates issued by the Municipal Corporation, Jalandhar were also exhibited by plaintiff No.2 as Ex.PA to Ex.PC and thereafter, evidence was closed vide separate statement.

[7]. On the other hand, defendant No.1 got himself examined as DW-1 and reiterated the assertions made in the written statement. He placed on record certified copy of Will dated 15.10.2008 executed by his father as Ex.D1, attested copy of the gift deed dated 05.04.1978 as Mark D1/A, certified copy of appeal filed by Ramesh Chand in the Court of Additional District Judge, Jalandhar as Ex.D2, original bainama as Ex.D4 and certified copy of judgment dated 14.11.2013 as Ex.D5. Jaswinder Kaur Bhatti was examined as DW-2 and Bishan Chand was examined as DW-3 who identified the signatures of Lamberdar Amarjit Singh (attesting witness to the Will dated 15.10.2008). The evidence of the defendants was closed by order of the Court on 14.09.2016.

[8]. Trial Court after going through the pleadings and evidence on record vide judgment and decree dated 24.10.2016 had decreed the suit filed by the plaintiffs with costs. Defendants were directed to

hand over the vacant possession of the suit property to the plaintiffs within a period of three months from the date of passing of the said judgment.

[9]. Three separate appeals, challenging the judgment and decree dated 24.10.2016 passed by the trial Court were filed before the Additional District Judge, Jalandhar, but the appeals met the same fate and the decision of the trial Court was upheld. Hence, the present regular second appeal.

[10]. Learned counsel for the appellant/defendant No.1 has argued that both the Courts below have failed to consider the evidence in right perspective and as such, there is misreading of evidence. Plaintiffs have failed to establish themselves to be owners of the entire suit property i.e. 40 marlas. The sale deeds placed on record by the plaintiffs only established the ownership of 10 marlas. He has further argued that defendant No.1 has become owner of the suit property by way of Will dated 15.10.2008 executed by his father. He further relied upon **Jago Ram @ Jagdish Vs. Municipal Committee, Kalanaur and another, 2018(1) Law Herald 882** and **Baljit Singh Vs. Raghubir Singh, 2009(4) RCR (Civil) 24** in support of his contentions.

[11]. Per contra, learned counsel for the respondents/plaintiffs have argued that there is no illegality or infirmity in the judgments and decrees passed by the Courts below. The evidence has been considered in the right perspective. It has been further argued that

the defendants/licensees cannot question the title of the licensors. As such, the appeal in hand deserves to be dismissed. Learned counsel further relied *upon Bansraj Laltaprasad Mishra Vs. Stanley Parker Jones, 2006(2) RCR (Civil) 38, Ude Singh and others Vs. Ram Chander, 2009(1) RCR (Civil) 41, Meenakshiammal (dead) through LRs. and others Vs. Chandrasekararn and another, (2005) 1 Supreme Court Cases 280, Balathandayutham and another Vs. Ezhilarasan, (2010) 5 Supreme Court Cases 770, B. Venkatamuni Vs. C.J. Ayodhya Ram Singh and others, (2006) 13 Supreme Court Cases 449, Gomtibai (Smt) (dead) through LRs. and others Vs. Mattulal (dead) through LRs, (1996) 11 Supreme Court Cases 681, Shaik Khadaru Masthan Vs. Smt. Sayyed Fathimun Bee, (2008) 1 ICC 107 and Mrs. Sonya Chikhalikar and another Vs. Mrs. Anita Fernandes and another, 2014 SCC OnLine Bom 1782* in support of their contentions.

[12]. I have gone through the pleadings as well as evidence on record and have heard learned counsel for the parties.

[13]. In my considered opinion, following substantial questions of law deserve consideration of this Court:-

"(1). Whether the plaintiffs have been able to establish the ownership of the entire suit property?

(2). Whether there is misreading of evidence, resulting in failure of justice?"

[14]. As per site plan Ex.P5, the dimensions have not been mentioned, but perusal of the testimonies of PW-1 Hardeep Kaur and PW-2 Naseeb Kaur would show that the suit property is measuring 40 marlas and as per the sale deeds placed on record and admission made by the defendants in the written statement, plaintiff No1 is owner to the extent of 10 marlas only which has been transferred to her by way of sale deed No.8300 dated 16.01.1976 (Ex.P4). The said 10 marlas of land was transferred to late Major B.S. Bhatti by way of gift deed dated 05.04.1978 (Mark D-1/A), but said gift deed has not been proved on record. As such, the ownership of 10 marlas of land would be deemed to be with plaintiff No.1. Other sale deeds i.e. Exs.P1 to P3 are the sale deeds executed by plaintiff No.1 in favour of her daughter plaintiff No.2. These sale deeds have been made in the year 2010 and are for total land measuring 24 marlas, but there is no proof on record to show the ownership of plaintiff No.1 for 24 marlas, rather by virtue of sale deed dated 16.01.1976 (Ex.P4), she was only owner of 10 marlas. As such, she could not have transferred more than her shares. Even in the cross-examinations of PW-1 Hardeep Kaur and PW-2 Naseeb Kaur, it has been admitted that plaintiff No.1 was only owner to the extent of 10 marlas. The relevant portion of the cross-examinations of the aforesaid witnesses extracted hereasunder:-

PW-1 Hardeep Kaur

".....It is correct that my father has purchased property measuring 10 marla in the name of my mother on 16.01.1976.

My mother has not purchased any property except above mentioned property. I do not know if my father has purchased property measuring 1-1/2 kanal from Naunihal and Udham Singh in the year 1979 as I was about 6-7 years old at that time. My father had expired on 10.11.2008. I never inquired from my father about any purchase of property during his life time. It is correct that mutation of only 10 marla has been sanctioned in the name of plaintiff No.1. I do not know if the remaining property of remaining portion of the property E-1 New Beant Nagar still in the name of previous owner Naunihal Singh and Udham Singh etc. I have seen TS-1 Form only in the name of my mother. There is no other documents regarding the ownership and title in the name of my mother of the property in question....."

PW-2 Naseeb Kaur

".....The property was purchased/owned by late Major B.S. Bhatti. The same was purchased by him. He was Army Officer at that time. It is correct that the sale deed of portion of the entire property measuring 10 marlas in my favour, the same was executed by him....."

*".....I am not doing any work. It is correct that my husband has purchased property measuring 10 marla on 16.01.1976 in my name. I have purchased other properties also in my own name besides the above said property of 10 marla from Udham Singh, but I do not remember, date, month and year. I have produced on record the sale deed/ownership of the other property on record. **I have seen the judicial file, in which there is only one sale deed dated 16.01.1976 which is Ex.P4 and the same is in my name. There is no other sale deed on record which shows my ownership of other properties.** The property which I have purchased Ex.P4 is the property E-1 New Beant Nagar, Chogiti, Jalandhar. I do not*

*know about the khasra number of above said property. Mutation was sanctioned in my favour with regard to above said property of 10 marla. **It is correct that my husband has also purchased the property measuring 1-1/2 kanal from Naunihal Singh and Udham Singh etc.** It is wrong to suggest that the property measuring 1-1/2 kanal in the name of late Major B.S. Bhatti, vide registered sale deed dated 15.02.1979....."*

".....It is correct that the 1-1/2 kanal land purchased by my husband forms part of house No.E-1 New Beant Nagar, Jalandhar. It is correct that the entire land i.e. 10 marla + 1-1/2 kanal is entered in revenue record....."

".....I have brought the original of Ex.P1 to P4. I have no proof of my ownership regarding the properties which I have transferred in the name of plaintiff No.2 vide documents Ex.P1 to P3....."

[15]. Perusal of the above would show that the plaintiffs have not been able to establish their ownership qua the entire suit property i.e. 40 marlas. Sale deed dated 16.01.1976 only confers ownership qua 10 marlas of land. It is a settled proposition of law that the plaintiffs have to stand on their own legs and have to establish their case by leading cogent evidence. Para No.1 of the plaint clearly states that the plaintiffs are the exclusive owners of the property No.E-1 New Beant Nagar, Jalandhar vide four registered sale deeds, but these four sale deeds do not confer the ownership to the plaintiffs. Three sale deeds dated 19.03.2010, 01.06.2010 and 05.04.2010 have been executed by plaintiff No.1 in favour of plaintiff No.2. These sale deeds are for total land measuring 24 marlas,

whereas at that time, plaintiff No.1 was having ownership of only 10 marlas. Plaintiffs have not brought on record any evidence to establish ownership qua the entire suit property. The ownership claimed on the basis of Municipal records would not confer any title in favour of the plaintiffs. The entries in the records of Municipal Committee/Corporation are only for fiscal purposes of assessments and realisation of house taxes and in any case, these cannot be construed as documents of title. The ratio laid down in **Baljit Singh's case (supra)** and **Jago Ram @ Jagdish's case (supra)** can be relied in this context.

[16]. The argument raised by learned counsel for the respondents that a licensee cannot deny the title of his licensor, holds no ground inasmuch as that the defendants in the present case have not denied the title in toto, rather the defendants in their written statement have specifically pleaded that plaintiff No.1 was owner by way of sale deed dated 16.01.1976 only to the extent of 10 marlas. The onus was on the plaintiffs to prove the ownership qua the entire suit land. Plaintiffs cannot take benefit of the weakness of the case of the defendants. Despite taking specific stand by the defendants in the written statements that late Major B.S. Bhatti could only get unregistered sale deed dated 15.02.1979 for 30 marlas of land, no specific replication was filed, rather the pleas of defendants were evasively denied. This contentious issue has not been adverted to by the Courts below. Even if, late Major B.S. Bhatti got possessory title qua this land measuring 30 marals even on the strength of

unregistered sale deed (which can at the most taken to be an agreement with the original owners namely Hardayal Singh, Prem Singh and Udham Singh on 15.02.1979), the same shall be inherited by all the legal heirs of late Major B.S. Bhatti in the absence of proof of valid Will in favour of defendant No.1. Defendant No.1 being one of the legal heirs of late Major B.S. Bhatti would succeed to definite share in the property and specific portion would be subject to partition. Despite the aforesaid factual position on record, the plaintiffs could not lead any cogent evidence to show their ownership over the entire property by way of any legal document. Possession of defendant No.1 to the extent of his undivided share in the property would not clothe him with the status of licensee, even if his possession is found with the permission of his parents. Succession/inheritance could not remain in abeyance after the death of Major B.S. Bhatti. Status of defendant No.1 as licensee even to the extent of 10 marlas out of 40 marals in total would be subject to lawful partition amongst all the stakeholders, therefore, the suit for mandatory injunction by labeling defendant No.1 to be licensee is not maintainable, rather suit for possession by way of partition would lie.

[17]. Before parting with the judgment, it would be appropriate to note that the case set up by the defendants with regard to Will dated 15.10.2008 executed by late Major B.S. Bhatti in favour of defendant No.1 was not proved and the findings recorded by the trial Court as well as the Lower Appellate Court were to the effect that the Will is not proved as per Sections 68 and 69 of the Indian Evidence

Act. DW-1 Kulwinder Singh Bhatti did not turn up for remaining cross-examination and as such, his evidence was discarded and other witness with regard to the Will was DW-3 Bishan Chand, Lamberdar, who had appeared and identified the signatures of Amarjit Singh, Lamberdar, but his evidence was not held to be sufficient in order to meet compliance of Section 69 of the Indian Evidence Act, as the death of the attesting witness or the fact that the attesting witness could not be found was not proved. Apart from above, the said Will was an unregistered Will and was executed on a simple paper. It was not even attested or notarized. As such, the findings recorded qua the said Will are upheld.

[18]. Taking into consideration the above facts, substantial questions of law are answered in affirmative and it is held that both the Courts below have misread and misconstrued the evidence. Plaintiffs have not been able to establish the ownership of the entire suit property. The ownership of the plaintiffs is established only qua 10 marlas of land. Plaintiffs would be at liberty to take possession of said 10 marlas of land in accordance with law by impleading all the co-sharers of the property and seek partition. The present suit for mandatory injunction in the present form is held to be not maintainable as the remedy available to the plaintiffs would be to seek possession by way of partition as they are owners only to the extent of 10 marlas in the total suit property.

[19]. For the reasons recorded hereinabove, I am of the considered opinion that the findings recorded by the Courts below are the result of misreading of evidence and the same are not legally sustainable.

[20]. In view of above, judgments and decrees passed by the Courts below are set aside. The present appeal is accordingly allowed. The suit filed by the plaintiffs is held to be not maintainable. All the pending applications are accordingly disposed of. Normal consequences to follow.

**(RAJ MOHAN SINGH)
JUDGE**

27.05.2020
Prince

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No