

116 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 5364 of 2018

Date of decision : August 27, 2020

SHER SINGH(NOW DECEASED) THROUGH LRAppellant

Versus

RAGHBIR SINGH AND ORSRespondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Manoj Kumar Pundir, Advocate for the appellant.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Appellant-plaintiff is aggrieved of judgment and decree dated 26.03.2014 passed by the learned Additional Civil Judge (Senior Division), Karnal, whereby the suit for declaration and possession filed by the plaintiffs was dismissed, as well as judgment and decree dated 07.03.2018 passed by the learned Additional District Judge, Karnal vide which appeal filed by the present appellant was dismissed.

Brief facts necessary for the adjudication of the case are that a suit for declaration was filed by Sher Singh through his power of attorney, hisson UdhamSingh, to the effect that decree dated 07.10.1986 passed by the learned Senior Sub Judge, Karnal in case No. 482/1986 (Ex.P3) as well as sale deed dated 27.06.1985 is illegal, fraudulent, null, void, abinitio and not binding upon the plaintiff. Restoration of possession of the land in question was also sought. It is

pleaded that the suit was being filed by the plaintiff - Sher Singh through his power of attorney holder i.e. his son, as Sher Singh was an illiterate man, aged eighty five (85). It is averred that the plaintiff is the owner in possession of the disputed land measuring 8 kanals. A dispute between the plaintiff and defendant No.2 Pala Ram, Dharampal and Lal Singh, was pleaded in respect to the ingress and egress to the suit land, which was claimed to be land locked. It is further stated that a dispute firstly arose between the parties in the year 1984-85 and a compromise was arrived at. It was agreed that half share of the wheat crop would be given to defendant No. 2- Pala Ram, Dharampal and Lal Singh i.e. predecessors-in-interest of defendants Nos. 3 to 6 for passage and for water used from their tubewell. A dispute again arose between the parties in the year 2000, when Dharampal passed away. It was agreed that land would be cultivated by defendant No. 2. Subsequently Lal Singh also passed away and defendant No.2 started cultivating the land. It is further stated that in the year 2005, defendant No.1 restrained the plaintiff from entering upon the suit property, while claiming that he was the owner in possession of the suitland. It is stated that the plaintiff thereafter verified the revenue record and came to know about the sale deed dated 27.06.1985 and decree dated 07.10.1986. Both the sale deed and decree are stated to be the result of fraud/fabrication. No sale deed was executed by the plaintiff in favour of defendant No. 2 – Pala, Dharampal and Lal Singh and that the decree, passed in the suit for pre-emption filed by defendant No.1 was the result of conspiracy between the defendants. Hence, the suit was filed in 2007.

Defendants while contesting the suit on various preliminary objections took a stand on merits that the property in question was legally sold by the plaintiff – Sher Singh vide sale deed dated 19.06.1985, which was duly registered on 27.06.1985 and mutation No. 743 was sanctioned subsequent thereto. Civil suit filed by defendant No. 1 was decreed on 07.10.1986 and mutation No. 744 was

thereafter sanctioned in the revenue record, reflecting defendant No. 1 to be the owner in possession of the suit property ever since. It is further stated that the plaintiff being well aware of the facts had filed the civil suit with malafide intention through his son as the special power of attorney. The plaintiff is stated to have sold his entire remaining land vide registered sale deed in favour of Karan Singh etc. by the year 1988 and had then left for U.P. Dismissal of the suit was sought.

Replication was filed.

Following issues were framed on the basis of the pleadings:-

1. Whether the plaintiff is entitled to declaration to the effect that decree dated 07.10.1986 and sale deed dated 19.06.1985 registered on 27.06.1985, are illegal, null and void? OPP
2. Whether the plaintiff is entitled to possession of the suit land? OPP
3. Whether plaintiff is entitled to permanent injunction restraining the defendant No. 1 from alienating the suit land? OPP
4. Whether the suit of the plaintiff is not maintainable in its present form? OPD
5. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD
6. Whether the suit filed by the plaintiff is barred by law of limitation? OPD.
7. Whether the suit filed by the plaintiff is not properly valued in the purposes of court fee and jurisdiction? OPD
8. Relief.

Evidence was led by both the parties as is detailed in paras No. 5 and 6 of judgement dated 26.03.2014 passed by the learned trial Court.

Learned trial court on considering the evidence on record dismissed the suit. Apart from being time barred, the suit was held to be devoid of any merit as there was no evidence on record to suggest that the sale deed and decree in question were a result of fraud and fabrication as alleged. The present civil suit was

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filed on 25.09.2007 challenging sale deed dated 27.06.1985 and decree dated 07.10.1986. Defendant No. 1, it is observed, was admittedly in cultivating possession of the suit property as is admitted by PW4 i.e. the son of the plaintiff, who went on to depose that he did not even know as to how much land was sold by his father and to whom. PW4 expressed ignorance about the total land holding of his father as well. Divergent reports, opinion and evidence of the handwriting experts examined by both the parties, to buttress their respective cases, was ignored in the given facts and circumstances. The suit was, accordingly, dismissed by the learned trial court vide judgement and decree dated 26.03.2014. Learned Additional District Judge, Karnal finding no merit in the appeal, dismissed the same vide judgement and decree dated 07.03.2018. Aggrieved therefrom, present appeal has been filed

Learned counsel for the appellant vehemently argues that both the learned courts below have wrongly dismissed the suit filed by Sher Singh seeking a declaration to the effect that sale deed dated 27.06.1985 and decree dated 07.10.1986 passed in Civil Suit No. 482 of 1986 are illegal, null, void and not binding upon the rights of the plaintiffs.

It is argued that a dispute had arisen between the parties in the year 1984-85 and a compromise was arrived at. It was agreed that half share of wheat crop would be given to defendant No.2 Pala, Dharampal and Lal Singh i.e. ancestors of defendants No. 3 to 6. Dispute again arose in the year 2000 and it was agreed that the land shall be cultivated by Dharampal. It is only in the year 2005, when defendant No. 1 sought to restrain the plaintiff from entering upon the land and claimed himself to be the owner in possession, that Sher Singh came to know about sale deed dated 19/27.06.1985 and decree dated 07.10.1986, which are stated to be a result of fraud and fabrication. It is contended that once the other sale deeds executed by Sher Singh, were not challenged, there was no question of filing a suit

for pre-emption in respect to only one sale deed qua 8 kanals of land only. Decree dated 07.10.1986, it is submitted, was obtained fraudulently, as is apparent from the fact that Sher Singh was proceeded ex parte in the said proceedings. The matter was compromised between Raghbir Singh and the vendees of the sale deed dated 27.06.1985 and Sher Singh was never served in accordance with law. It is further submitted that evidence of the hand writing expert examined by the plaintiff has been wrongly ignored. The said hand writing expert Ram Dhan Babbar PW7, has clearly stated that thumb impressions of Sher Singh were affixed on blank papers as there was overwriting on one thumb impression, showing that the sale deed was executed without the knowledge of Sher Singh. Learned counsel for the appellant further refers to the statements of DW4 Raghbir Singh and DW5 Pala Ram to buttress his argument that Raghbir Singh had not challenged execution of any of the other sale deeds. It is, thus, prayed that judgment and decree dated 26.03.2014 passed by the learned Additional Civil Judge (Senior Division), Karnal as well as judgment and decree dated 07.03.2018 passed by the learned Additional District Judge, Karnal be set aside and suit filed by the appellants be decreed throughout.

Having heard learned counsel for the appellant and going through the file with his assistance, I do not find any ground whatsoever to interfere in this regular second appeal. Both the learned courts below have rendered correct findings, which are based on proper appreciation of the evidence on record. It is not denied that the dispute revolves around a part of the property/land holding owned by Sher Singh (represented by his legal representatives, though the present appeal has been filed only by Udham Singh). The present suit was filed by Sher Singh through his power of attorney holder and son, namely Udham Singh on 25.09.2007, challenging sale deed dated 19.06.1985 duly registered on 27.06.1985. Mutation was duly sanctioned. Civil suit No. 482 of 1986 by defendant No. 1 seeking pre-emptory rights was decreed on 07.10.1986 and the necessary mutation

was duly sanctioned in the revenue records. As per the revenue record, defendant No. 1 is registered as the owner in cultivating possession of the suit property since then. It is opposed to all probability and reasonableness that the plaintiff would not have come to know of the execution of the sale deed or the decree from 1985-86 till the year 2005. The present suit was filed two years thereafter in September 2007, on the ground that the plaintiff could not lay his hands on the relevant documents and it is only when they plaintiff along with his son accidentally met Banwari Lal son of Puran Ram, that they came to know about the same. The evidence on record clearly does not substantiate the said averments of the plaintiff. PW4 while deposing before the learned trial court has categorically admitted possession of defendant No. 1 over the disputed property. He has expressed his ignorance even in regard to a vital fact regarding the total land holding of Sher Singh as well as the land sold by Sher Singh and the details regarding the said sale transaction. Sher Singh admittedly filed the present suit through his power of attorney holder i.e. his son. Sher Singh died during the pendency of the suit in the year 2011 and never stepped in the witness box.

I do not find any merit in the argument raised by learned counsel for the appellant, that the contents of sale deed dated 19.06.1985 have not been proved or that it is rendered invalid because signatures of all the vendees(purchasers) are not present. Defendants have led cogent evidence on record to prove the execution of the said document. It is proved on record that the said sale deed is a duly registered document and there is nothing on record to indicate fraud, forgery or fabrication as alleged. There is sufficient reliable evidence on record regarding the due execution of the sale deed dated 19.06.1986 registered on 27.06.1986 and decree dated 07.10.1986. It is further not in dispute that complaint No. 67/13 filed by the plaintiff through his son on 07.09.2007/18.04.2013, against Raghbir Singh, Pala Ram, Banwari Lal, Dharam Singh and Lal Singh, under Sections 420, 406, 467,

468, 471 and 120B IPC was dismissed on 06.07.2013, while holding that there are no sufficient grounds to issue process against the accused.

Similarly, the argument regarding due credence not being given to the Handwriting and Finger Print Expert Ram Dhan Babbar (PW7) examined by the plaintiff, by both the learned courts below, is devoid of any merit. It is a matter of record that both the plaintiff as well as defendants examined separate handwriting and fingerprint experts to substantiate their respective case. PW7 Ram Dhan Babbar was examined by the plaintiff and DW2 Dr. Vikram Raj Singh Chauhan was examined by the defendants. Both of the experts submitted their respective reports, favouring the party engaging them. Totally divergent and diverse opinions have been rendered by the said experts. In such a situation, both the learned courts below have rightly discarded both the reports and have given a correct finding on the basis of the evidence on record.

Another argument vehemently stressed upon by learned counsel for the appellant, is that Raghbir Singh not challenging execution of any of the other sale deeds executed by Sher Singh, is a pointer to the fraudulent nature of the sale deed dated 27.06.1986 and decree dated 07.10.1986. This argument is noticed only to be rejected being totally devoid of any merit. Merely because defendant No. 1 had sought to enforce his right of pre-emption only qua 8 Kanals of land, does not in any manner come to the aid of plaintiff to render sale deed dated 27.06.1986 and decree dated 07.10.1986 to be illegal, null and void. It is relevant to note at this stage that sale of the entire land sold by Sher Singh is not disputed. This fact has been conceded to even before this court, on a pointed query to learned counsel for the appellant.

Keeping in view the facts and circumstances, there is no question of law much less a substantial question of law, which is involved for consideration in this regular second appeal.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 26.03.2014 passed by the learned Additional Civil Judge (Senior Division), Karnal as well as judgment and decree dated 07.03.2018 passed by the learned Additional District Judge, Karnal, which calls for interference by this Court in second appeal.

Accordingly, this appeal is dismissed with no order as to costs.

(Lisa Gill)
Judge

August 27, 2020
Rts

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