

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

RSA No. 120 of 2021 (O&M)
Date of Decision: November 30th, 2021

Virender @ Vijender

..... Appellant(s)

Versus

Kamdhenu Agro Ltd. and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Priyanka Kansal, Advocate and
Mr. Alankar Narula, Advocate
for the appellant.

Mr. Rajesh K. Sheoran, Advocate
for respondent no.1.

LISA GILL, J.

Appellant-plaintiff has filed this appeal being aggrieved of judgments and decrees dated 10.01.2019 and 12.02.2021, passed by the learned Additional Civil Judge (Sr. Division), Ganaur and learned Additional District Judge, Sonapat, respectively.

Brief facts necessary for adjudication of this appeal are that the plaintiff filed a suit for declaration to the effect that he is owner in possession of the land to the extent of 1/5th share out of the land inherited by him alongwith his family members from his father. He also sought a decree for possession of 1/5th share of the land received by him with family out of the suit land inherited from his father. It is averred that the plaintiff received 1/5th share out of the suit property through inheritance from his father and in the year 2004, plaintiff's mother, brother namely Surender Kumar and sister Pooja sold

their share to defendant no.1. Thereafter, on 21.12.2004 plaintiff's brother Surender Kumar and sister Poonam sold their share to defendant no.1. Poonam sold her share through her mother as her attorney. Mutation of the sale deeds, it is stated, was wrongly entered, reflecting the plaintiff to be the vendor of the said sale deed and plaintiff's name Vijender was mentioned in mutation no.4782 and ownership of the land is reflected to be transferred in favour of defendant no.1, illegally on the basis of sale deed no.2949 dated 21.12.2004. It is averred that the plaintiff in fact never sold his share to any person including defendant no.1. Plaintiff claimed to be owner in possession of his share as received from his father and co-owner in possession with defendant no.1. It is further averred that entries of ownership and possession have been wrongly entered in the name of defendant no.1 in the Jamabandi for the years 2008-2009 & 2014-2015 and they have been wrongly transferred in the name of defendant no.1 by defendants no.2 and 3 in collusion with each other. Plaintiff is stated to have requested the official defendants to change the revenue record in respect to 1/5th of the property and hand over joint possession but to no avail, therefore, the suit was filed.

None appeared on behalf of defendant no.1 and it was proceeded ex-parte on 08.11.2016. Written statement was filed by defendants no.2 to 5, taking various preliminary objections including that of concealment of material facts. It is stated that version of the plaintiff was required to be verified and in case it is correct, at best it is a clerical error and can be rectified. The plaintiff, it is stated had never approached the official respondents. Dismissal of the suit was sought.

Replication was not filed. Following issues were framed by the learned trial Court on the basis of the pleadings:-

- i. Whether plaintiff is entitled for a decree of declaration to the effect that he is owner of the total share of defendant no.1 i.e. 1/5th share out of the suit property on the grounds mentioned in the plaint? OPP.
- ii. Whether the plaintiff is entitled to a decree of possession directing the defendant no.1 to handover the actual physical possession of the suit property to him? OPP
- iii. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
- iv. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD
- v. Whether the plaintiff has not come to the Court with clean hands and has suppressed the material facts from the Court? OPD
- vi. Relief.

Evidence was led by both the parties in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, facts and circumstances of the case finding no merit in the suit, dismissed the same while specifically observing that the plaintiff failed to prove his case on preponderance of probabilities. It is further observed that plaintiff never challenged sale deed no.2949 dated 21.12.2004 (Ex. P-13) for reasons best known to him and neither impleaded his brother Surender as a party. Reference has also been made to the photographs of the plaintiff affixed on Ex.P-13 with the observation that plaintiff has not approached the Court with clean hands and that he has miserably failed to establish how fraud was committed upon him by defendant no.1 while executing the sale deed.

Appeal filed by the appellant-plaintiff was dismissed by the learned Additional District Judge, Sonapat. Defendant no.1 was represented before the 1st Appellate Court. Learned Additional District Judge, Sonapat observed that it is the family of the plaintiff which executed two sale deeds in favour of respondent no.1. Photographs of the parties were taken at the time of execution of both the sale deeds. Photograph of the plaintiff is duly affixed on the sale deed Ex.P-13 and that even if the plaintiff was minor at the time of execution of the sale deed dated 21.12.2004, he never challenged the said sale deed within limitation, after attaining majority. The present suit, that too for declaration that plaintiff was owner of 1/5th share of the property, was filed in the year 2015. An application under Order 6 Rule 17 CPC, during pendency of the appeal before the learned Additional District Judge, Sonapat was moved by the plaintiff seeking to amend the prayer clause to the effect that sale deed dated 21.12.2004 and subsequent mutation no.4782 and other revenue entries are illegal, null and void, therefore, not binding on the rights of the plaintiff, thus liable to be set aside. This application was dismissed by the learned Additional District Judge, Sonapat on 12.02.2021. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argued that both the learned Courts below have grossly erred in law and on facts in dismissing the suit filed by the appellant-plaintiff. Learned counsel submitted that the plaintiff's claim is based on title, therefore, there is no question of limitation and furthermore, learned Courts below have failed to take into consideration the fact that appellant-plaintiff's brother Surender Kumar could not have sold property beyond his share. Therefore, in any case said sale deed is null and void and therefore, there is no necessity for even challenging the same. However, by

way of abundant caution, an application had been moved under Order 6 Rule 17 CPC before the learned Additional District Judge, Sonapat for amendment of the prayer clause, which was wrongly dismissed. It is submitted that an application under Order 6 Rule 17 CPC read with Section 151 CPC for amendment of the plaint has been moved alongwith the present appeal as well. Learned counsel submitted that it would be in the interest of justice to allow the appellant to incorporate the prayer regarding setting aside of the sale deed dated 21.12.2004 and subsequent mutation no.4782 and the same not being binding on the rights of the plaintiff as well as permitting the appellant's brother, mother and sisters to be impleaded as party to the suit. It is further contended that language of the plaint reveals that the challenge to the sale deed is very much there and it should have so been construed. Moreover, non-impleadment of Surender Kumar cannot be a ground to non-suit the appellant for the simple reason that vendor of the sale deed may be a proper but not necessary party. It is thus prayed that this appeal be allowed. Judgments and decrees passed by both the Courts below be set aside and the suit be decreed throughout.

Though, notice of motion had not been issued, Mr. Rajesh K. Sheoran, Advocate, who had appeared on behalf of respondent no.1 was heard. While refuting the arguments raised by learned counsel for the appellant, Mr. Sheoran submitted that both the learned Courts below have rendered well reasoned and concurrent findings of fact based on proper appreciation of the evidence on record. It is submitted that the suit for declaration filed without challenging the sale deed in question is clearly not maintainable. Moreover, there is nothing on record to show any fraud committed by respondent no.1 upon the plaintiff. Learned counsel for respondent no.1 contends that in fact, it is defendant no.1, who has been a victim of fraud at the hands of the plaintiff

and his family, if at all. Very fact that the plaintiff chose not to implead any of his family members, is a clear cut indication of the same. The plaintiff, it is submitted, for reasons best known to him, did not raise any objection whatsoever for such long years from 2004 till 2015 despite being well aware of the factum of the sale deeds as well as of the possession of defendant no.1 over the suit property. Learned counsel further submits that application moved subsequently for amendment of the prayer clause and now for impleadment of plaintiff's family members is clearly devoid of any merit and merely an attempt to fill in the lacuna. It is further submitted that in the garb of this application, plaintiff seeks to start the proceeding de-novo. It is thus prayed that this appeal as well as the applications be dismissed.

I have heard learned counsel for the parties and have gone through photocopy of the record, which was requisitioned.

It is a matter of record that two sale deeds were executed in respect to the property inherited by the plaintiff, his mother, brother and sisters in favour of defendant no.1. The first sale deed no.2104 dated 28.09.2004, (Ex.P-12) was executed by the plaintiff's mother, brother Surender Kumar and sister Pooja. The second sale deed no.2949 dated 21.12.2004 (Ex.P-13) was executed by Surender Kumar, plaintiff's sister Poonam through her mother as her attorney. It is borne out from the record that photograph of the plaintiff is found affixed on the sale deed Ex.P-13 and the same matches with his photograph on the matriculation certificate, Ex.P-11, as has been duly observed by the learned Additional District Judge, Sonapat. More importantly, it is to be noted that the plaintiff has alleged fraud to have been committed. At this stage, it is gainful to reproduce the exact averment in the plaint filed by the appellant/plaintiff, relevant portion of which reads as under:-

“.....

“2. That in the year 2004 the mother of the plaintiff and his brother namely Surender Kumar and Sister Smt. Pooja sold their share to defendant no.1 again on dated 21.12.2004 brother of the plaintiff Surender Kumar and Sister Smt. Poonam sold their property, Poonam sold her property through her mother as her Attorney. The mutation of these sale deeds were wrongly entered showing the plaintiff as vendor of the above mentioned sale deeds mentioning his name as Vijender in mutation no.4782 ownership of his share is shown in the name of defendant no.1 wrongly and illegally on the basis of sale deed no.2949 dt.21.12.2004. In fact, the plaintiff never sold his property to any other person including the defendant no.1. The plaintiff is owner in possession of his share receive from his father and co-owner in possession with defendant no.1 but the entries wrongly has been transferred in the name of the defendant no.1 of ownership and possession by defendant no.2 to 3 inclusion with defendant no.1. certified copy of mutation no.4782 is attached herewith. The entries of ownership and possession wrongly have been entered in the name of defendant no.1 in the jamabandi of the year 2008-09 or 2014-15 also. Certified copy of the jamabandi are attached herewith the plaint for kind perusal of the Hon’ble Court.

4. That the revenue entries are coming in the name of the defendant no.1 wrongly and illegally and defendant have been claiming himself as owner due to the wrong revenue entries.

5. That the plaintiff requested the defendants many times to change the revenue record from the name of the defendant no.1 in favour of the plaintiff and handover joint possession but the defendants are adamant and refused to accept the genuine request of the plaintiff on dt. 02.09.2015.

6. That the cause of action arose on 02.09.2015, when the defendants refused to admit the genuine claim of the plaintiff over the suit land, hence this suit.

.....”

As per Ex.P-13, land has been sold by Surender Kumar and Poonam through her attorney Smt. Santra (mother). Photograph of the plaintiff is very much reflected on the sale deed. Therefore, observation of the learned trial Court that plaintiff has not come to the Court with clean hands, is borne out from the record. Therefore, the argument and allegation that the sale deeds suffer from fraud exercised upon the plaintiff by defendant no.1, clearly hold no merit and neither are they substantiated by an iota of evidence on record. Fraud, if any and if at all would have been committed by the plaintiff's brother or other family members but a perusal of the plaint clearly reveals that there is no such allegation therein. Therefore, the application filed by the plaintiff under Order 6 Rule 17 CPC at the stage of first appeal has been rightly dismissed. Averments in the plaint do not in any manner reveal challenge to the sale deed being the result of any fraud perpetuated either by defendant no.1 or by the plaintiff's brother or other family members. Therefore, applications moved under Order 6 Rule 17 CPC read with Section 151 CPC, for amendment in the prayer clause and for additionally impleading plaintiff's brother, mother and sisters at this stage, are also clearly devoid of any merit. Foundational facts in this regard are conspicuous by their absence in the plaint.

In view of the absence of relevant averments/pleadings in the plaint, reference by learned counsel to the judgment of the Hon'ble Supreme Court in ***Mahila Ramkali Devi and others Vs. Nandram (Dead) through legal representatives and others (2015) 13 Supreme Court Cases 132***, is of no avail, as the said decision is not applicable in the facts and circumstances of the present case. There is no doubt that a prayer for amendment of the plaint cannot be denied only on the ground of delay but at the same time, it is relevant to note as discussed in the foregoing paras that averments in the plaint filed by the

plaintiff do not in any manner lay the foundation for the prayer sought to be incorporated. There is no allegation of fraud etc., which has been raised by the plaintiff against his own brother or qua defendant no.1. There is no explanation as to why the appellant having attained majority in 2008, never chose to challenge the sale deed executed in December, 2004. There is nothing on record to indicate that the plaintiff-appellant at any point of time had ever taken any action against his brother or any other family member for allegedly transferring land in favour of defendant no.1 in an illegal manner. Similarly it is evident that plaintiff was well aware of these sale deeds since their execution as possession of the suit property was handed over to defendant no.1 at the time of sale deed. Admittedly no action was taken by the plaintiff till the filing of this suit for declaration in 2015. Neither had the plaintiff ever moved the revenue authority for correction of revenue records, being very well aware of the entire position. In the given factual matrix both the learned Courts below have returned well reasoned and concurrent findings based on proper appreciation of the evidence on record.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 10.01.2019, passed by the learned Additional Civil Judge (Sr. Division), Ganaur, as well as judgment and decree dated 12.02.2021, passed by learned Additional District Judge, Sonapat, which calls for any interference by this Court in second appeal.

In my considered opinion, no question of law, much less a substantial question of law arises for adjudication in this appeal. Both the learned Courts below have rendered concurrent findings of fact against the

appellant on a wholesome and proper appreciation of evidence on record, which brooks no interference.

No other argument has been raised.

Accordingly, this appeal as well as application under Order 6 Rule 17 CPC read with Section 151 C.P.C., are dismissed with no order as to cost. Judgments and decrees dated 10.01.2019 and 12.02.2021, passed by the learned Additional Civil Judge (Sr. Division), Ganaur and learned Additional District Judge, Sonapat, respectively, are upheld.

Pending applications, if any, are decided accordingly.

November 30th , 2021
Sunil

(**LISA GILL**)
JUDGE

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