

104 (2 cases)

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

RSA-825-2021 (O&M)
Date of decision: 07.10.2021

Gurcharan Singh

...Appellant

Versus

Gurnam Singh and others

...Respondents

RSA No.836-2021 (O&M)

Gurcharan Singh

...Appellant

Versus

Gurnam Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Pankaj Kaushik, Advocate,
for the appellant.
(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

CM-3934-C-2021 in RSA-825-2021

CM-3962-C-2021 in RSA-836-2021

For the reasons stated in the applications, the same are allowed
and delay of 318 days in filing the appeals is condoned.

Main cases

Vide this common order, I intend to dispose of the
aforementioned two appeals, as common question of law and facts are
involved therein. For brevity, facts are being taken from RSA No.825 of
2021.

For convenience, parties herein are addressed as per recitals
before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts
below, the plaintiff is in second appeal before this Court assailing the trial

Court judgment and decree dated 25.08.2015, as upheld by the learned First Appellate Court vide its judgment and decree dated 27.02.2019.

3. Brief and consolidated facts of both the suits for declaration possession and consequential relief of permanent injunction instituted by the plaintiff against the defendants are as under:

First suit has been filed by the plaintiff seeking relief of declaration to the effect that alleged power of attorney dated 03.05.2005 bearing 24/4 alleged to be executed by Late Smt. Shanti Devi@ Shanti Kaur and subsequent sale deed dated 23.05.2005 on the basis of alleged power of attorney and subsequent alleged sale deed dated 18.07.2006, subsequent revenue entries including mutation no.1865 dated 11.08.2005 on the basis of alleged sale deed No.761/1 and mutation No.1893 dated 29.07.2006 on the basis of alleged sale deed No. 1807/1, are illegal null and void and not binding on the rights of the plaintiff. Further a decree for possession directing defendant No.18, namely, Ishwar Singh to hand over vacant possession of the suit land to the plaintiff and defendant No.18 Ishwar Singh be also directed to pay mesne profits for use and occupation of the land since the date of filing of the suit till the delivery of possession @ 20,000 per acre per annum with a consequential relief of permanent injunction restraining defendant No.18 from alienating or transferring the suit land in any manner or to change the nature of suit land by uprooting the earth or to raise construction in any manner.

The second suit has been filed by plaintiff Gurcharan Singh seeking declaration to the effect that alleged sale deed No. 760/1 dated 23.05.2005 executed by Niranjana Singh and the subsequent alleged sale deed

dated 18.07.2006 and revenue entries including mutation No. 1866 dated 11.08.2005 on the basis of alleged sale deed No.760/1 and mutation No.1893 dated 29.07.2006 on the basis of alleged sale deed No. 1807/1 are illegal, null and void and not binding on the rights of the plaintiff.

4. Based on the rival pleadings, following issues were framed in the first suit bearing No.RBT 141 of 2008/2014.

“1. Whether the alleged power of attorney dated 03.05.2005 bearing No.24/4 and subsequently sale deed No.761/4 dated 23.05.2005, sale deed No.1807/1 subsequently mutation No.1865 dated 11.08.2005 and mutation No. 1893/1 dated 29.07.2006 are null, void, ineffective, inoperative and not binding on the rights of the plaintiff? OPP

2. Whether the plaintiff is owner of 1/3 share to the land as described in para no.2 of the plaint on the basis of Will dated 05.02.2004? OPP

3. Whether defendant No.18 can be directed to hand over the vacant possession of the suit land to the plaintiff and to pay mesne profit for use and occupation of the land since the date of filing of the suit at the rate of 20,000/- per acre per annum? OPP

4. Whether the defendants No.17 and 18 are bonafide purchasers? OPD

5. Whether the plaintiff has not paid advalorem court fee? OPD

6. Whether the suit is bad for misjoinder and non joinder of necessary parties? OPD

7. Whether the plaintiff is estopped from his own act and conduct to file and maintain the present suit? OPD

8. Whether the plaintiff has no locus standi to file the present suit? OPD

8(a) Whether the suit is time barred? OPD

9. Relief.”

In second suit bearing No. 171 of 2008 the following issues were framed:-

1. “Whether the sale deed No.760/1 dated 23.05.2005 and subsequently sale deed No.1807/1 dated 18.07.2006 entries in mutation No.1893 dated 29.07.2006 are null, void , ineffective, inoperative and not binding on the rights of the plaintiff? OPP

2. *Whether the plaintiff is owner of 1/3rd share to the land as described in para no.2 of the plaint on the basis of Will dated 05.02.2004 as prayed for? OPP*
3. *Whether the defendant No.18 can be directed to hand over the vacant possession of the suit land to plaintiff and to pay mesne profit for use and occupation of the land since the date of filing of the suit at the rate of Rs.20,000/- per acre per annum?OPP*
4. *Whether defendants No.17 and 18 are bonafide purchaser? OPD*
5. *Whether plaintiff has not paid the advalorem court fee?OPD*
6. *Whether the suit of the plaintiff is bad for misjoinder and non joinder of necessary parties?OPD*
7. *Whether the suit is not within limitation? OPD*
8. *Whether the suit is not maintainable in the present form? OPD*
9. *Whether the plaintiff has no locus standi to file and maintain the present suit? OPD*
10. *Whether this court has no jurisdiction to entertain and try the present suit? OPD*
11. *Whether the plaintiff is estopped from his own act and conduct to file and maintain the present suit? OPD*
12. *Relief."*

5. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

6. On appraisal of evidence vis-a-vis pleadings, in both the suits trial Court decided issues No.1 to 3 against the plaintiff and issues No.4 to 8 (a) against the defendants.

7. First Appellate Court dismissed the appeal. Hence Regular Second Appeal before this Court.

8. I have heard the learned counsel and perused the judgments of both the Courts below. To my mind, judgments under challenge have been rendered after due and correct appreciation of evidence adduced by the respective parties. Relevant of the First Appellate Court Judgment, with which, *inter alia*, I am in agreement, is as below:-

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“29. *It is also relevant to mention here that the sale deeds bearing Nos.760/1 and 761/1 have been executed on 23.05.2005 whereas Shri Naranjan Singh died in the year 2007 and Smt. Shanti Devi died in the year 2008. The plaintiff had not filed the suit for declaring the G.P.A. dated 03.05.2005 and sale deeds dated 23.05.2005 as illegal, null and void and not binding upon his rights during the life time of Naranjan Singh and Smt. Shanti Devi. Even Smt. Shanti Devi and Naranjan Singh against whom the alleged fraud has been played in respect of execution of G.P.A. and sale deeds, do not challenge the aforesaid documents. Learned counsel for the appellant-plaintiff has laid much emphasis that Naranjan Singh had appeared as CW1 in a private complaint (titled Gurcharan Singh Vs. Gurnam Singh and others) and he deposed about the fraud committed by defendant No.1 Gurnam Singh. However, a perusal of Ex.P-8, the statement suffered by Naranjan Singh in said case, would reveal that he nowhere has stated that he or his wife Smt. Shanti Devi were not present in the Tehsil Campus at that time of execution of said G.P.A or that they had gone to Tehsil Campus to execute some other documents.*

30. *So far as the next contention raised by learned counsel for appellant-plaintiff that Naranjan Singh had obtained the loan from Cooperative Bank even after the execution of sale deeds No.760/1 and 761/1 dated 23.05.2005 and that this fact proves that no consideration was paid to him, is concerned, it may be mentioned here that Naranjan Singh might have obtained the loan but mere this fact is not sufficient to prove that no consideration was paid to him and that fraud was committed upon him by the defendant No.1 Gurnam Singh and others. It is settled proposition of law that fraud like any charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt. However, suspicious may be the circumstances, however, strange the co-incidence and however grave the doubts, suspicion alone can never take the place of proof.*

31. Further, it may be mentioned here that plaintiff had filed a civil suit No.210 of 2009, date of institution 26.05.2004/24.03.2009 titled Gurcharan Singh Vs. Gurnam Singh and others for injunction (permanent and mandatory). A perusal of judgment dated 09.12.2010 (Ex.P21) passed in said suit would reveal that defendant Ravinder Kumar and Ishwar Singh were also parties in the said suit and the sale deed Nos.760 and 761 dated 23.05.2005 were placed on record in the said case as Ex.P20 and Ex.P21 respectively. However, the plaintiff did not challenge the said sale deeds in the aforesaid civil suit filed by him against Gurnam Singh and others for the reasons best known to him. It shows that the plaintiff had left his claim against the sale deeds in question in the said suit. Therefore, present suits filed by the plaintiff subsequently in the year 2008 are barred under Order II Rule 2 C.P.C., which is reproduced as under:-

“2. Suit to include the whole claim (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

2) Relinquishment of part of claim:- Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

3) Omission to sue for one of several reliefs- A person entitled to move than one relief in respect of the same cause of action may sue for all or any of such relief; but if he omits, except with the leave of the Court, to sue for all such relief, he shall not afterwards sue for any relief so omitted.

Explanation:- For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action”.

32. *Keeping in view the above discussion, this Court is of the view that appellant-plaintiff has failed to prove any fraud or cheating committed by defendant No.1 upon Smt. Shanti Devi and Shri Naranjan Singh in the execution of General Power of Attorney dated 03.05.2005 and sale deeds dated 23.05.2005. The learned lower Court rightly has observed that the defendants, who had purchased the land in question are bonafide purchasers as they had verified the title of the original owners, which was not in dispute.”*

9. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. No fresh ground worthy of interference in the appellate jurisdiction of this Court is made out.

10. Furthermore, no question of law, much less substantial, a sine qua non for entertaining regular second appeal, is involved herein, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

11. In view of my discussion above and the reasons aforesaid, this appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

12. Pending application/s, if any, shall also stand disposed of.

13. No order as to costs.

07.10.2021

vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:

Yes

Whether reportable:

No