

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

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RSA No. 959 of 2012 (O&M)

Date of decision: 01.08.2022

Sukhwinder and others

...Appellants

Versus

Joginder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Vijay Pal, Advocate
for the applicants-appellants.

Mr. Vishal Sharma, Advocate
for the respondents.

ARVIND SINGH SANGWAN, J. (Oral)

CM-4795-C-2022

Prayer in this application is for restoration of the main appeal,
which was dismissed for non-prosecution on 13.07.2022.

For the reasons stated in the application, the same is allowed.
The main appeal is restored to its original number and stage. Let it be taken
up today itself for final arguments.

RSA No. 959 of 2012 (O&M)

Challenge in this appeal, filed by the appellants/defendants, is
laid to the judgment and decree dated 18.08.2004 passed by the trial Court,
vide which the suit filed by the respondents/plaintiffs was decreed, as well
as to the judgment passed by the lower appellate Court, vide which the
appeal of the appellants/defendants was dismissed by the lower appellate
Court.

Brief facts of the case as noticed in the judgment of lower appellate Court are as under:

“2. Brief facts of the case are that land measuring 5 Kanals 19 marlas was originally owned by Mangal Singh and Swaran Singh sons of Bhana son of Kesar, resident of village Bhaini Banger, Tehsil and District Gurdaspur. Said Mangal Singh died on 18.10.1976, whereas, Swaran Singh died on 22.5.1986. Plaintiff No.1 was the son of Mangal Singh and plaintiff No.2 was the grand son of Mangal Singh, whereas, defendant No.5 was the son of Swaran Singh, the only legal heirs and successors-in-interest of the deceased. It was alleged that the plaintiffs and defendant No.5 had inherited the estate of deceased Mangal Singh and Swaran Singh, respectively. Plaintiff Nos.1 and 2 were residing at Danga Mahisila P.S. Asansol District Burdwan, CD/77/2 MAMC, Durgapur and as such, they had appointed Gurdial Singh as their general attorney vide general power of attorney dated 26.4.2000. It was further alleged that in the month of March, 2000, the plaintiffs came to know that defendants Nos.1 and 2 had been entered as Owners of the suit land on the basis of illegal sale deed dated 7.1.1997. The plaintiffs were not residing in the village and they had settled at far away places from the village. On the basis of the alleged sale deed dated 7.1.1997 allegedly executed by Mangal Singh and Swaran Singh, defendants Nos.1 and 2 had been shown to be owners of the suit land in the revenue record. It was also alleged that defendant no.3 impersonated himself as Mangal Singh and defendant No.4 as Swaran Singh before the Sub Registrar, Gurdaspur, in order to grab the suit land and got the sale deed executed in favour of their wives defendants nos.1 and 2. The alleged vendors had

already died and there was no occasion for the alleged sale deed dated 7.1.1997. It showed that the sale deed dated 7.1.1997 was illegal and bogus. Defendants Nos.1 and 2 had no right, title or interest in the suit land. It was further alleged that in the sale deed, Rect . No .27 Killa No.23/1 (4-9) was shown out of which 0-9 marlas was sold and Rect. No.27 Killa No.18/2 (5-10). In the Jamabandi, Rect. NO. 27, Killa No.23/1/1 (0-9) had been shown to have been 73 sold as the said khasra Number after the sale was bifurcated. The plaintiffs were the owners of the suit land alongwith defendant No.5 and were not bound by the alleged sale deed. The possession of defendants Nos.1 to 4 was illegal and the plaintiffs were entitled to the recovery of possession from defendants Nos.1 to 4 and as such, suit was filed out of which, the present appeal has arisen.

3. Upon notice, defendants Nos.1 to 4 appeared and contested the suit by filing written statement taking the preliminary objections that the suit was not maintainable and that the plaintiffs were neither owners, nor in possession of the suit land and that the suit was not maintainable and was not properly valued and was liable to be stayed U/S 10 CPC and that it was barred by principles of res judicata and was not within time and that the standi to file the plaintiffs had no locus suit and that it was bad for non- joinder and mis-joinder of parties. On merits, it was submitted that the defendants were the owners in possession of the suit land and the mutation was also sanctioned in their favour. It was averred that the defendants had purchased the suit land from Mangal Singh and Sowaran Singh vide registered sale deed dated 7.1.1997. It was denied that plaintiff No.1 was the son of Mangal Singh whereas, plaintiff No.2 was the grandson of Mangal singh. It was also

denied that defendant No.5 was the son of Sowaran Singh. It was also denied that the plaintiffs were the legal heirs and successors-in-interest of Mangal Singh and Sowaran Singh. The plaintiffs and defendant No.5 had no right, title or interest in the suit land. The alleged power of attorney dated 26.4.2000 was forged and fabricated document. It was maintained that the sale deed dated 7.1.1997 was legal and valid and the defendants were Owners in cultivating possession of the suit land. All other averments of the plaint were denied being incorrect. It was prayed that the suit of the plaintiffs was without any merit and as such, same was liable to be dismissed with costs.”

The trial Court framed the following issues:

1. Whether the plaintiffs are entitled to the declaration that they alongwith defendant No. 5 are the owners of the suit land measuring 5 Kanals 19 marlas as the sale deed dated 7.1.1997 alleged to have been executed by Mangal Singh and Swaran Singh in favour is illegal ? OPP
2. Whether the plaintiffs are entitled to the possession of the suit land ? OPP
3. Whether the suit is not maintainable ? OPD
4. Whether the suit is liable to be stayed U/s 10 CPC? OPD
5. Whether the suit is barred by resjudicata? OPD
6. Whether the suit is not within limitation ? OPD
7. Whether the plaintiffs have got no locus standi to file the present suit ? OPD
8. Whether the suit is not properly valued ? OPD
9. Whether the suit is bad for non-joinder and mis-joinder of necessary parties ? OPD