

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

RSA-3963-2016(O&M)

Date of decision:-8.12.2022

Dalip Kaur and others

...Appellants

Versus

Lachhman Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Parminder Singh (Sunny), Advocate
for the appellants.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Smt.Dalip Kaur – widow, Bhadur Singh – son and Jagtar Singh – grandson of Sh.Pakhar Singh had brought a suit against defendants Lachhman Singh, Makhan Singh, Sarabjit Singh – sons, Smt.Shindo @ Suiinder Kaur, Smt.Beebo @ Balbir Kaur, Smt.Rano @ Gurbax Kaur – daughters of Sh.Nasib Singh as well as Amrik Singh and Santokh Singh sons of Pakhar Singh, seeking a declaration that plaintiffs along with proforma defendants No.7 and 8 namely Amrik Singh and Santokh Singh are owners in equal shares of the estate left by Sh.Pakhar Singh son of Battan Singh situated in the area of village Bundala, Tehsil Phillaur, District Jalandhar and in the area of village Pasli, Tehsil Phillaur, District Jalandhar and that Sh.Pakhar

Singh had never mortgaged the suit land in favour of Sh.Nasib Singh(since deceased) son of Battan Singh predecessor-in-interest of defendants No.1 to 6 and that the alleged mortgage deed dated 18.7.2001 statedly to be registered on 19.7.2001 as claimed by Nasib Singh deceased and after his death by his LRs defendants No.1 to 6-A regarding the suit property is illegal, null and void and result of fraud and misrepresentation as well as without consideration and as such is liable to be set aside along with mutations sanctioned on the basis thereof.

2. In nutshell, the case of the plaintiffs is that the suit property was previously owned by Pakhar Singh, who had died on 25.2.2003 in Canada and after his death mutation regarding his landed property was sanctioned in favour of his widow - Dalip Kaur and sons Bhadur Singh, Jagtar Singh, Amrik Singh and Santokh Singh; Amrik Singh and Santokh Singh (defendants No.7 and 8) are also residing in Canada, therefore, in absence of Smt.Dalip Kaur and Bhadur Singh as well as Amrik Singh and Santokh Singh, the land is being cultivated by plaintiff No.3 Jagtar Singh; even khasra girdawari is being entered in the name of Jagtar Singh; Pakhar Singh was residing in Canada for the last 35-40 years; similarly Nasib Singh predecessor-in-interest of defendants No.1 to 6-A was also putting up in Canada almost for that much period. Nasib Singh was elder brother of Pakhar Singh; Pakhar Singh had died in the year

2003 at the age of about 77 years; Nasib Singh had expired later on through his wife had pre-deceased him; Pakhar Singh used to come to India and he was being looked after by the plaintiffs; the plaintiffs had cordial relations with him till his death; Pakhar Singh was never in need of raising any loan or creating any encumbrance upon his landed property; in the year 2001, Pakhar Singh and Lachhman Singh son of Nasib Singh came from Canada to India; they were not accompanied by Nasib Singh; after a short span of time, Pakhar Singh and Lachhman Singh returned to Canada, however, Lachhman Singh s/o Nasib Singh threatened to dispossess the plaintiffs from the suit property; at that time there was some rumor that Lachhman Singh defendant No.1 had got some mortgage deed executed from Pakhar Singh in favour of Nasib Singh, however, as a matter of fact suit property was never mortgaged by Pakhar Singh in favour of Nasib Singh; the mortgage deed claimed by defendants No.1 to 6-A is illegal, null and void without consideration, as such is liable to be set aside. When the grouse was cast over their title regarding the suit property including houses in question, the plaintiffs filed the suit in hand.

3. On notice, the defendants did not appear despite service, as such they were proceeded against ex-parte.

4. During the course of evidence of the plaintiffs, they examined Satnam Singh as PW1, Lachhman Singh as PW2, Santokh

Singh as PW3, Jagtar Singh attorney of plaintiffs No.1 and 2 appeared as PW4. After tendering documents counsel for the plaintiffs closed his evidence.

5. Arguments advanced by learned counsel for the plaintiffs were heard and judicial file was perused and thereafter, the trial Court of Addl.Civil Judge(Sr.Divn.), Phillaur vide judgment and decree dated 20.10.2012 dismissed the suit of the plaintiffs.

6. Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in the Court of District Judge, Jalandhar, which was assigned to Additional District Judge, Jalandhar, who vide judgment and decree dated 8.1.2016 dismissed the same.

7. Still feeling dissatisfied, the plaintiffs have knocked at the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and their suit be decreed.

8. I have heard learned counsel for the appellants besides going through the record.

9. Both the Courts below considering the facts and circumstances of the case, the evidence brought on record by the parties in light of the settled legal position have arrived at the conclusion that the impugned mortgaged deed was executed on

18.7.2001. Such deed carries photographs of Lachhman Singh – defendant No.1, who had appeared on behalf of Nasib Singh as well as Pakhar Singh predecessor-in-interest of plaintiffs and defendants No.7 and 8 and was attested by Mohan Singh, Lambardar as well as Kanwar Singh son of Ajit Singh resident of village Bundala and further signatures of deceased Pakhar Singh were there on the endorsement of Sub-Registrar as well as on the second page of the mortgage deed. The plaintiffs had neither denied signatures of Pakhar Singh nor his photographs on the mortgage deed, rather plaintiffs themselves admitted in the pleadings as well as in the evidence that in year 2001 Pakhar Singh and Lachhman Singh came from Canada to India. Thus, presence of Pakhar Singh and Lachhman Singh in India at the time of execution of the mortgage deed is not disputed by the plaintiffs even.

10. With regard to the allegations by the plaintiffs that mortgage deed is result of fraud and is without consideration, it was taken into view that Pakhar Singh mortgagor had not challenged the mortgage deed during his life time inasmuch as mortgage deed was executed on 18.7.2001, whereas Pakhar Singh had died in the year 2003 in Canada. The mortgage deed being a registered document carries presumption of due execution and genuineness. Furthermore, in the mortgage deed it is mentioned that amount of Rs.24 lakhs had already been received by Pakhar Singh. Since Pakhar Singh during

his life time did not raise any objection to the mortgage deed and only he could inform that no consideration amount had passed from the mortgagee to him or that the mortgage deed was result of fraud and misrepresentation. But as already observed he did not challenge the mortgage deed on any ground during his life time. Jagtar Singh plaintiff No.3 had obviously knowledge regarding the mortgage deed from the very beginning since he had filed an application before the revenue authorities for correction of khasra girdawari regarding the suit properly in village Pasli as well as village Bundala and he had made Pakhar Singh and Nasib Singh as party in these proceedings, where the revenue authorities had directed that khasra girdawari be corrected in the name of Jagtar Singh. Furthermore, defendants have said to have filed a suit against the plaintiffs for recovery of possession as well as claiming damages, which was dismissed in default due to non prosecution. In that way, the opinion of the Courts below that plaintiffs have miserably failed to prove their case, therefore their claim was rejected.

11. I find that the findings given by the Courts below are based upon proper appreciation and correct interpretation of law. Both the Courts had rejected the claim of the plaintiffs. I do not see any reason to disagree with the Courts below and take a different view and further to interfere with the impugned judgments and decrees.

12. No substantial question of law or fact arises in this appeal.

13. Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments and decrees passed by the Courts below. The same are upheld

14. The appeal stands dismissed with costs accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

8.12.2022
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No