

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

**RSA-524-2020 (O&M)
Reserved on : 26.05.2022
Date of Decision : 31.05.2022**

Prithipal Singh (now deceased) through his LRsAppellant

VERSUS

Harminder Singh & OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajesh Sethi, Advocate and
Mr. Manvinder Singh Sidhu, Advocate
for the appellant.

ALKA SARIN, J.

The present regular second appeal has been preferred by the defendant No.11-appellant, since deceased, through his legal representatives against the concurrent findings recorded by both the Courts below whereby the suit for declaration filed by the plaintiff-respondent No.1 has been decreed.

The brief facts relevant to the present *lis* are that a civil suit was filed by the plaintiff-respondent No.1 averring therein that the original owner of the property in dispute was the Langar Sahib Gurudwara Bhaini Sahib at village Bhaini Sahib, Tehsil and District Ludhiana through Maharaj Partap Singh ji through his attorney Baba Jagjit Singh ji Maharaj as per General Power of Attorney dated 20.03.1957 and he sold, (A) land measuring 133 square yards comprised in Khasra No.2355/1949/1397

entered vide jamabandi for the year 1950-51 situated at Dholewal, Tehsil and District Ludhiana, Millerganj; and (B) Land measuring 3995.5 square yards comprised in Khasra No.597/598 entered vide jamabandi for the year 1950-51 situated at Dholewal, Tehsil and District Ludhiana, Millerganj; vide two sale deeds dated 26.12.1957 and 11.11.1957 to M/s Guru Nanak Cycle Manufacturing Industrial Cooperative Society Limited, Ludhiana. Vide Resolution dated 06.06.1965 the members of the said Society authorised defendant-respondent No.8 (Balbir Singh), one of its members, to alienate the said property and vide sale deed dated 13.07.1965 Vasika No.1837, plot measuring 4171 square yards comprised in Khasra No.2523/849 Khata No.329/417 was sold to M/s Guru Nanak Engineering Works, 747, Industrial Area-B, Ludhiana and actual possession was delivered. The said M/s Guru Nanak Engineering Works, the partnership firm, vide sale deed dated 29.06.1996 Vasika No.1222 also purchased another plot measuring 494 square yards comprised in Khasra No.426 Khata No.176/331 situated at Gill-2, Tehsil and District Ludhiana, bounded as East: other owner, West: Lal Singh and Tara Singh, North: Buyer and South: Passage 20' wide, from its owner Gurmukh Singh. According to the plaintiff-respondent No.1, the partners of the partnership firm M/s Guru Nanak Engineering Works as on 14.11.1977 were Balbir Singh 17%, Saran Pal Singh 22%, Gurcharan Singh 17%, Paramjit Kaur 17%, Ajit Singh 17%, Parminder Singh 5% and Harminder Singh 5%. The partner Ajit Singh vide agreement to sell dated 12.10.2000 sold his share in the partnership firm to Balbir Singh (3%), Saran Pal Singh (3%), Gurcharan Singh (3%) and Harbhajan Singh (8%). Vide agreement to sell dated 02.01.2004 the partners Parminder Singh and Balbir Singh sold their respective shares in the partnership firm and its assets to

Harpal Kaur and Maninder Pal Kaur. Thus the following persons became partners in the partnership firm with the following ratio of shares :

a.	Gurcharan Singh	$17\%+3\%=20\%$
b.	Harminder Singh	5%
c.	Maninder Pal Kaur	$12\frac{1}{2}\%$
d.	Harpal Kaur	$12\frac{1}{2}\%$
e.	Paramjit Kaur	17%
f.	Harbhajan Singh	8%
g.	Saranpal Singh	$22\%+3\%=25\%$

There was no such other property as House No.B-XXXI-10552/662 measuring 133 square yards comprised in Khasra No.2300/1949/1397 shown as red in the site plan bounded as East: Guru Nanak Engineering Works 52', West: PWD Road 52', North: Street 20' wide to the extent of 23' and South: Street 18' wide to the extent of 23'. It was further averred that all properties stood sold vide sale deed dated 13.07.1965 and neither was any property left nor was any resolution passed thereafter in favour of Balbir Singh to sell the property vide sale deed 10.09.1986 Vasika No.9339 in favour of the defendants - Bhupinder Singh, Harbhajan Singh, Darshan Kaur, Kanwaljit Kaur, Prithipal Singh, Avneet Singh - and one Kuljit Kaur. As such, the sale deed dated 10.09.1986 was sought to be declared null, void and illegal.

Separate written statements were filed by defendant Nos.2, 9 and 10. Similarly, separate written statements were filed by defendant Nos.1, 3 to 8 and 12 to 14. Defendant No.11-appellant was initially proceeded against ex-parte on 19.07.2005 and he died on 12.05.2007. Thereafter, vide order dated 17.03.2010 his legal heirs were impleaded as a party and the ex-parte order was set-aside. Thereafter, the legal heirs of defendant No.11-

appellant filed a separate written statement raising preliminary objections regarding maintainability of the suit, non-joinder and mis-joinder of parties and the suit being collusive. On merits, it was denied that the sale deed dated 10.09.1986 was illegal and it was stated that the defendant No.11-appellant was owner in possession of the suit property which was let out to one Dharampal c/o HS and Company who did not pay rent and an ejectment petition was also filed by him against Dharampal c/o HS and Company in which an eviction order had been passed on 27.01.2004.

The plaintiff-respondent No.1 filed replications to the written statements filed by the defendants. On the basis of the pleadings, the following issues were framed on 28.01.2011 :

1. Whether the plaintiff is entitled for decree of declaration as prayed for ? OPP
2. Whether the plaintiff is co-sharer to the extent of 5 percent as mentioned in the head note ? OPP
3. Whether the alleged sale deed dated 10.09.1986 is illegal, null and void, if any right ? OPP
4. Whether the plaintiff is entitled to permanent injunction as prayed for ? OPP
5. Whether the suit of the plaintiff is maintainable in the present form ? OPP
6. Whether the suit is bad for mis-joinder and for non-joinder of necessary parties ? OPD
7. Relief.

Vide judgment and decree dated 17.04.2014 the Trial Court, on the basis of the pleadings and the evidence on the record, partly decreed the

suit setting aside the sale deed dated 10.09.1986 in favour of the defendants including the defendant No.11-appellant. Aggrieved by the judgment and decree passed by the Trial Court, the defendant No.11-appellant, through legal representatives, preferred an appeal before the lower Appellate Court. The said appeal was also dismissed vide judgment and decree dated 30.08.2019 upholding the findings recorded by the Trial Court. Hence, the present regular second appeal.

Learned counsel appearing on behalf of the appellant has contended that the Firm which is the owner of the suit property has not been impleaded as a party nor Kuljit Kaur, one of the vendees, is a party to the suit. It is further the contention that the suit for declaration had been filed after over 18 years of the execution of the sale deed dated 10.09.1986 and hence was not maintainable. It is further argued that the plaintiff-respondent No.1 has not proved the title of his vendor and that the objection raised by the defendant No.11-appellant regarding the tendering of documents has been dealt with by the Trial Court by stating that the same is a stock objection and inadmissible evidence has been relied upon. Learned counsel for the defendant No.11-appellant has placed reliance on the following judgments :

1. Md. Noorul Hoda Vs. Bibi Raifunnisa & Ors. [1996(7) SCC 767]
2. Sneh Gupta Vs. Devi Sarup & Ors. [2009(2) RCR (C) 129]
3. Abdul Rahim & Ors. Vs. SK. Abdul Zabar & Ors. [2009(2) RCR (C) 934]
4. S. Kumar Vs. Institute of Constitutional and Parliamentary Studies [1983(4) SCC 516]

5. State of Punjab Vs. Rajinder Singh [1999 SCC (L&S) 664]
6. M/s Radha Krishan Industries Vs. State of Himachal Pradesh
[2021(6) SCC 771]
7. Sait Tarajee Khimchand Vs. Yelamarti Satyam [AIR 1971 SC
1865]
8. Karnail Singh Vs. M/s Kalra Brothers [2009(2) RCR (Civil)
380]

Heard.

In the present case both the Courts below have concurrently returned findings of fact that Balbir Singh had no authority to sell the suit property vide sale deed dated 10.09.1986. A perusal of the written statement filed on behalf of the defendant No.11-appellant reveals that the ownership of the Firm was not disputed by the defendant No.11-appellant. Rather, in the written statement, there is a simpliciter denial of most of the paragraphs of the plaint. The only stand taken by the defendant No.11-appellant was that the sale deed dated 10.09.1986 was valid and that he was owner in possession of the suit property and the same had been let out to one Dharam Pal c/o HS and Company against whom the defendant No.11-appellant had filed an ejectment petition in which an order of eviction was passed against the tenant. Most of the arguments raised by learned counsel for the defendant No.11-appellant before this Court were neither pleaded in the written statement nor argued before the Courts below. Taking up the argument raised by learned counsel for the defendant No.11-appellant that the Firm, which is the owner of the suit property, was not impleaded as a party and that Kuljit Kaur, one of the vendees, was not impleaded as party, it may be noted that Issue No.6 was specifically framed as to whether the suit

is bad for mis-joinder or for non-joinder of the necessary parties. Before the Trial Court the contesting defendant No.11-appellant could not point out as to which of the parties who were necessary to the suit have not been impleaded and accordingly the said issue was decided against the defendant No.11-appellant. Hence, both the arguments raised by learned counsel that the Firm which is the owner of the property was not impleaded as a party as well as the argument that Kuljit Kaur one of the vendees was not impleaded as a party, deserve to be rejected. Further, the argument raised by learned counsel that the suit was not maintainable in the present form was also decided against the defendant No.11-appellant while returning a finding on Issue No.5. A perusal of the judgment passed by the lower Appellate Court reveals that none of the said arguments were specifically raised before the lower Appellate Court and are also not detailed in the memorandum of appeal filed before the lower Appellate Court. Hence, the same deserve to be rejected. Argument of learned counsel that the suit for declaration would not be maintainable after 18 years also deserves to be rejected on the ground that the defendant No.11-appellant has been unable to counter the stand taken by the plaintiff-respondent No.1 qua the knowledge of the sale deed dated 10.09.1986. The paragraph in the plaint qua the content as to when the cause of action arose would be deemed to having been admitted by the defendant No.11-appellant inasmuch as a perusal of the written statement reveals that there is a simpliciter denial to the said paragraph. In the absence of any specific denial, the contents of the paragraph would be deemed to be admitted. Further, learned counsel for the defendant No.11-appellant has been unable to show to this Court any evidence on the record whereby the knowledge of the said sale deed could be attributed to the plaintiff-

respondent No.1 to any time prior to the institution of the suit. In the absence of the same, this Court cannot but reject the argument raised by learned counsel for the defendant No.11-appellant. The next argument of learned counsel that the plaintiff-respondent No.1 has not been able to prove the title of his vendor is also liable to be rejected on the ground that sufficient evidence was produced on the record to show that the Firm was the owner of the suit property. In any case, the said fact has not been denied by the defendant No.11-appellant in his written statement. Coming to the next argument raised by learned counsel that inadmissible evidence has been taken into account and that the objection thereto has been dismissed as being a stock objection by the Trial Court also deserve to be rejected inasmuch as a perusal of the judgment passed by the Trial Court reveals that it has categorically been noted that the objection was a stock objection without specifying the nature of the objection. Even otherwise, the factual averments made in the plaint have not been specifically denied by the defendant No.11-appellant. It does not now lie in the mouth of the defendant No.11-appellant to challenge the title of the plaintiff-respondent No.1.

Learned counsel for the defendant No.11-appellant has simply reiterated the submissions that were advanced before the Courts below and which submissions were rejected after due and comprehensive consideration. The judgments relied on by the learned counsel would be of no avail inasmuch as on the factual aspect, as held above, in the written statement filed by the defendant-appellant herein to most of the averments made in the plaint there was a simpliciter denial. The averments were not specifically denied and would hence be deemed to be admitted.

No question of law, much less, any substantial question of law arises in the present case. Both the Courts below have recorded concurrent findings of fact warranting no interference by this Court.

In view of the above, I do not find any illegality and infirmity in the judgments and decrees passed by the Courts below. The appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

31.05.2022

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO