

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA-1470-2023 (O&M)

Date of Decision: 24.7.2023

Kailash Chander

....Appellant

VERSUS

Paramjit and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present : Mr. Sandeep Sharma, Advocate,
for the appellant.

KARAMJIT SINGH, J.

CM-5434-C-2023

For the reasons mentioned in the application, the same is allowed and delay of 42 days in filing the appeal is condoned.

Main case

Instant appeal has been filed by the appellant/plaintiff to assail judgment and decree dated 4.10.2022 passed by the Court of learned Additional District Judge, Jalandhar whereby the appeal filed by the appellant/plaintiff challenging dismissal of his suit for possession of suit property measuring 0K-8M and for declaration that mutation No.23317 sanctioned in favour of respondent No.1-Paramjit is illegal and unlawful and for permanent injunction restraining the respondents-defendants from changing nature of the suit property and further, restraining them from disposing of the same to any third person, is damaged.

2. The case set up by the plaintiff-appellant is that the appellant and respondents No.1 and 2 namely Paramjit and Baldev Raj are sons of

Mani @ Mani Ram who has since died. Mani alias Mani Ram sold 3 Marlas

out of the suit property to the plaintiff for valuable consideration vide sale deed dated 14.8.1991. The father of the plaintiff was also owner of another 5 Marlas out of total suit land; that during his life time, father of the plaintiff executed a registered Will dated 4.5.1988 with regard to said 5 Marlas of land in favour of the plaintiff. Thus, the plaintiff became owner of entire suit land measuring 8 Marlas comprised in Khasra No.1279, 1280 and 2982/12/76; that the plaintiff gave the suit property to defendants as licensee and before filing of the suit, difference arose between the parties and the defendants were asked to vacate the suit property but they refused to do so.

3. The suit was contested by defendant No.1-Paramjit who filed written statement taking various preliminary objections and on merits, it was pleaded that during his life time, father of answering defendant namely Mani @ Mani Ram sold 5 Marlas out of the disputed property to defendant No.1 vide registered sale deed dated 8.10.1996; that thus, at the time of his death, Mani @ Mani Ram was having no right, title or interest in the property in dispute.

4. Defendants No.2 and 3 also filed separate written statement wherein they denied and controverted the claim of the plaintiff.

5. From the pleadings of the parties, following issues were struck in the case :-

1. Whether the plaintiff is entitled for the relief of possession as being prayed for ? OPP
2. Whether the plaintiff is entitled for the relief of declaration as being prayed for ? OPP
3. Whether the plaintiff is entitled for the relief of permanent

injunction as being prayed for ? OPP

4. Whether the present suit is not maintainable? OPD
5. Whether the plaintiff has not come to the court with clean hands and has suppressed the true and material facts? OPD
6. Whether no cause of action to the plaintiff to file the present suit? OPD
7. Whether the present suit has not been properly valued for the purpose of court fee and jurisdiction? OPD
8. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD
9. Whether the site plan filed by the plaintiff wrong and incorrect? OPD
10. Relief.

6. To prove his case, plaintiff-Kailash Chander stepped into witness box as PW1 and also examined PW2-Inderjit Singh, Naib Sadar Kanungo, Jalandhar and proved on record copy of mutation No.21578 Ex.P1, site plan Ex.P2, copy of Jamabandi Ex.P3, copy of Aks-shajra Ex.P4, copy of jamabandi Ex.P5, copy of mutation No.24837 Ex.PW2/A entered on the basis of sale deed dated 8.10.1996, copy of mutation No.20806 Ex.PW2/B entered on the basis of sale deed dated 8.10.1996, copy of mutation No.23317 Ex.PW2/6 entered on the basis of sale deed dated 8.10.1996.

7. On the other hand, defendants examined DW1-Prabhjot Singh, Junior Assistant, HRC Branch, DC Office, Jalandhar, Ex.DW2/DW4 Davinder Pal, Bill Distributor, PSPCL, DW-3 Surinder Kumar, Technician, Municipal Corporation, Jalandhar, DW-5/Anil Kumar, Kanungo, DW-

6/Gurdev Lal, Lamberdar, DW-7/Paramjit (defendant No.1), DW-8/Rakesh Kumar, DW-9/Baldev Raj and produced copy of jamabandi Ex.D1, copy of sale deed dated 12.7.1965 Ex.D2, site plan Ex.D3, copy of voter identity card Ex.D4, aadhar card Ex.D5, ration cards Ex.D6 and Ex.D7, receipt issued by PSPCL Ex.D8, photographs Ex.D9 to Ex.D13, sale deed dated 12.7.1965 Ex.DW1/A, memo No.3072 Ex.DW2/A, electricity bills Ex.DW2/B to Ex.DW2/B, copy of register of payment Ex.DW2/E, copy of register Ex.DW3/A, copy of memo No.5044 Ex.DW4/A, electricity bills Ex.DW4/B to Ex.DW1/G, affidavit of Kailash Chander Ex.DW5/a, copy of affidavit Ex.DW6/1, copy of sale deed dated 23.5.2000 Ex.DW8/C, sale deed Ex.DX executed by Mani @ Mani Ram in favour of defendant No.1.

8. After hearing both the parties, learned trial Court dismissed the suit.

9. The plaintiff preferred an appeal against the judgment and decree passed by the learned trial Court but the same was also dismissed by the learned first appellate Court vide judgment and decree dated 4.10.2022 while upholding the findings given by the learned trial Court.

10. Being aggrieved, the appellant has filed the present appeal.

11. Counsel for the appellant, while assailing the impugned judgments and decrees passed by the Courts below, has submitted that there is ample evidence on record to prove that out of total land measuring 8 Marla, the appellant purchased 3 Marla of land from his father Mani @ Mani Ram for valuable consideration vide sale deed dated 14.8.1991. He has further submitted that Mani @ Mani Ram also owned another 5 Marla of land regarding which he executed registered Will dated 4.5.1988 in favour of the appellant and thus, on death of Mani @ Mani Ram, the

appellant became owner in possession of suit land measuring 8 Marla. Counsel for the appellant further submits that the appellant used to look after respondents No.1 and 2 who are his real brothers and the appellant also raised construction in some portion of the suit property which is shown in yellow colour in the site plan. It is further submitted that later on, the appellant inducted the respondents as licensees in the suit property and license was oral; that after sometime, differences arose between the parties and then the appellant asked the respondents to vacate the suit property and in this manner, license was revoked. Counsel for the appellant further submits that the appellant being owner of the suit property, is entitled to get its possession from the respondents who are illegally occupying the same.

12. I have considered the submissions made by the counsel for the appellant.

13. The appellant has asserted his claim over the suit property measuring 8 Marlas on the basis of one registered sale deed dated 14.8.1991 whereby his father Mani @ Mani Ram sold 3 Marlas out of the suit property to him and registered Will dated 4.5.1988 executed by said Mani @ Mani Ram in his favour. Admittedly, Mani alias Mani Ram was owner of 8 Marlas of land. Respondent No.1 has admitted in his written statement that his father sold 3 Marlas of land to the appellant. Thus, execution of sale deed dated 14.8.1991 whereby the appellant purchased 3 Marlas of land from Mani alias Mani Ram stands proved. The appellant while appearing in the witness box as PW1 admitted execution of sale deed dated 8.10.1996 Ex.DX in his testimony. The execution of said sale deed Ex.DX whereby Mani alias Mani Ram sold his remaining land measuring 5 Marlas to respondent No.1 is also proved by the official of the office of Sub Registrar,

Jalandhar, thus, making it clear that at the time of his death, Mani @ Mani Ram was not owner of 5 Marlas of land which as per the appellant was succeeded by him on the death of his father on the basis of Will dated 4.5.1988. So, execution of the aforesaid Will by Mani @ Mani Ram in favour of the appellant is of no consequence. This fact was also admitted by the appellant in his testimony as has been observed by the learned trial Court. The first appellate Court while further elaborating the facts and circumstances of the case observed that original registered Will dated 4.5.1988 is not proved on record. Also, no reliable evidence is available on record to prove that respondents were inducted as licensees in the suit property by the appellant.

14. In view of the discussion made hereinabove, I do not find any illegality or irregularity in the findings returned by the learned trial Court and affirmed by the first appellate Court which are purely factual in nature and based on proper appreciation of evidence available on record. No question of law muchless substantial question of law is involved in the present appeal warranting interference by this Court.

15. Accordingly, the present appeal is dismissed.

(KARAMJIT SINGH)
JUDGE

July 24, 2023
Paritosh Kumar

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