

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

RSA-1110-1994(O&M)

Reserved on:-11.5.2023

Date of pronouncement:-18.5.2023

Jug Lal (deceased) and others

...Appellants

Versus

Nathu and others

...Respondents

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

Present: Mr.Krishan Sharma, Advocate
for the appellants.

Mr.Akshay Kumar Goel, Advocate
for respondents No.1 and 2.

H.S. MADAAN, J.

1. In nutshell, the facts of the case are that plaintiffs Nathu Ram and two others had brought a suit against defendants Jug Lal(deceased) and others, seeking a decree for permanent injunction restraining the defendants from interfering in peaceful possession of Bara shown in red colour and marked as ABCD in the site plan attached with the plaint bounded as East – property of other owners, West – Gali, North – House of plaintiffs and South – Public path situated at village Bakhra, Tehsil and District Bhiwani and further from alienating the same in any manner.

2. As per the version of the plaintiffs, the Bara in suit is having area of 330.5 square yards and plaintiffs along with Siri Ram @ Siri Chand and Jug Lal were owners of the same; Siri Ram and Jug Lal had sold the Bara to the plaintiffs vide a registered sale deed No.841 dated 16.7.1975; the plaintiffs had also constructed a Khudi in the Bara and they are using it for tethering cattle and preparing cow dung cakes besides storing manure and stones therein; the defendants have no concern with the Bara, even then they threatened to interfere in possession of the plaintiffs and were also adamant to alienate the same, giving rise to a cause of the action to the plaintiff to bring the suit.

3. Notice of the suit was given to the defendants. Defendant No.1 had contested the suit filing written statement raising various legal objections contending that there is no Bara belonging to the plaintiffs, though Siri Ram and Jug Lal had $\frac{2}{9}$ share in the Bara while $\frac{7}{9}$ share belonged to defendants No.1 to 4 with Siri Ram having $\frac{1}{9}$ share; Siri Ram had died in the year 1977 and his property was inherited by defendant No.4 Suresh; defendant No.4 Suresh had $\frac{4}{9}$ share in the suit property, which bears khasra no.180 measuring 18 marlas i.e. 547 square yards; Siri Ram and Jug Lal had not executed any sale deed in favour of the plaintiffs and if there is any such sale deed, the same is null and void. The defendant No.1 prayed for dismissal of the suit.

The written statements filed by defendants No.1 to 4 is on the similar lines as that of defendant No.1.

4. The plaintiffs had filed replication to the written statement controverting the allegations in the written statements whereas reiterating the averments in the plaint

5. On the pleadings of the parties, following issues were framed:

1. Whether the sale deed no.180 was validly executed on 16.7.1975 and plaintiff has become exclusive owner in possession of the property in dispute? OPP.

2. Whether the suit is not maintainable in the present form? OPD.

3. Whether the plaintiff is estopped by his act and conduct from filing the present suit? OPD.

4. Relief.

6. Both the parties were afforded adequate opportunities to lead their evidence in support of their respective claims.

7. After hearing the learned counsel for the parties, the trial Court of Addl. Senior Sub Judge, Bhiwani by giving issue-wise findings dismissed the suit of the plaintiffs vide judgment and decree dated 4.11.1992.

8. Feeling aggrieved by the said judgment and decree, the plaintiffs had filed an appeal in District Court at Bhiwani, which was accepted by learned District Judge, Bhiwani vide judgment and

decree dated 5.2.1994, resultantly the judgment and decree passed by the trial Court were set aside and suit of the plaintiffs was decreed with costs.

9. Being dissatisfied with the judgment and decree passed by District Judge, Bhiwani, the defendants have filed the present regular second appeal before this Court, notice of which was issued to the respondents and respondents No.1 and 2 have put in appearance through counsel.

10. I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the present appeal.

11. Learned trial Court while discussing the issue No.1 had observed that the plaintiffs were required to prove as to whether sale deed no.841 dated 16.7.1965 had been validly executed in their favour and they have become owners in possession of the suit property. PW1 Nathu Ram had categorically deposed in that regard proving sale deed Ex.P2 along with site plan Ex.P3, Akshazra Ex.P4 and his statement was supported by PW2 Ishwar and Ram Kishan PW3. Whereas in rebuttal to that evidence, the submissions made on behalf of defendants to the effect that Siri Ram and Jug Lal were not exclusive owners of the suit property and they had no right to alienate the same to the plaintiffs were considered in light of jamabandi for the year 1975-76 Ex.D1 onwards up to Ex.D5 so as to

conclude that ownership and possession of the defendants is evident from the documentary evidence Ex.D1 to Ex.D5, therefore, the plaintiffs have no concern over the suit property. Learned trial Court also observed that the sale deed in question was not validly executed and plaintiffs are not in exclusive possession of the suit property; resultantly their suit was dismissed.

12. I find that the approach of the trial Judge was not in accordance with law. The settled law is that question of title is not to be decided in a suit for injunction and further jamabandies are not documents of title. The main purpose of preparation of jamabandies is for fiscal purposes as has been held in judgment by Single Judge of this Court in case **Sewa Singh and others Versus Union of India and others, 2007(3) RCR(Civil) 748**. Whereas the sale deed is a document of title and in case of contradiction between the sale deed and entries in jamabandi, the sale deed is to be relied upon. The trial Court forgot the basic legal principle while deciding the suit.

13. However, that wrong was undone by learned District Judge, Bhiwani, who while disposing of appeal in para No.8 has observed that when question of ownership is raised on the basis of a written document, due importance has to be given to such a sale deed to determine the question of title and possession and the entire circumstances, which go in favour and against a person setting up a deed of title, must be considered before the case is disposed of.

14. Learned District Judge, Bhiwani has analyzed the evidence brought on record by the parties in a very minute and careful manner, relying upon the sale deed Ex.P2, site plan Ex.P3 and Aksazra Ex.P4 observing that there is nothing on record to show that the sale deed was obtained by any fraud or misrepresentation. Though the sale deed has not been recognized by the revenue authorities so far. Referring to statement of DW1 Jug Lal, one of the vendors, he had admitted in his cross-examination that he had sold some land measuring about 20 yards to the appellants/plaintiffs for Rs.200/- executing the sale deed and that towards the north of that land sold to the plaintiffs, their houses are located. Giving reasons DW2 Kanshi Ram was not found to be reliable witness. Whereas DW3 Amar Singh in his statement had admitted that towards the north of the suit property, there is house of the plaintiffs and he had not said anything with regard to possession of the defendants. In para No.13 of the judgment, learned District Judge, Bhiwani has observed that the totality of the situation reflects that the defendants have set up absolutely frivolous pleas and virtually there is neither any evidence nor any circumstances which could be interpreted in their favour and in para No.14, the observations made are that case of the appellants is supported by overwhelming evidence and their case is absolutely truthful. The findings given by the trial Court on issue No.1 were held to be absolutely erroneous and were reversed.

Resultantly, the appeal was accepted.

15. No reason is found to differ with such observations made by the First Appellate Court and to take a contrary view in light of the facts and circumstances of the case.

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

17. 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 judgment passed by the District Judge, Bhiwani.

18. The appeal stands dismissed accordingly.

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

18.5.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No