

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

RSA-423-1997 (O&M)

Reserved on: 20.04.2023

Date of pronouncement: 01.05.2023

Darbara Singh (since deceased) through his LRs

...Appellants

Versus

Jarnail Singh and others

...Respondents

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

Present: Mr. Kashmir Singh, Advocate with
Mr. Lalit Sharma, Advocate for the appellant.

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Anirudh Gupta, Advocate for respondent No.1.

Mr. D.S. Brar, Advocate for respondent No.4.

Mr. P.S. Dhaliwal, Advocate for respondent No.5.

Mr. A.S. Sekhon, Advocate
for LRs of respondent No.6.

H.S. MADAAN, J.

In nutshell, facts of the case are that plaintiffs Jarnail Singh, Shinder Singh, Baltej Singh, Jagtar Singh sons of Jangir Singh had brought a suit against defendants Darbara Singh, Mukand Singh, Jarnail Singh sons of Lahora Singh, Bibi (daughter of Jai Kaur) widow of Gurdial Singh, Kello (daughter of Jai Kaur) wife of Karnail Singh and Sham Kaur (daughter of Jai Kaur) widow of Gurnam Singh

seeking a declaration that order dated 19.09.1986 passed by High Court of Punjab and Haryana is not binding on the ownership rights of plaintiffs being collusive between defendants Darbara Singh, Mukand Singh and Jarnail Singh and mutation of inheritance No.3578 dated 09.09.1987 is null and void besides seeking a decree for permanent injunction restraining defendants No.1 to 3 from executing, implementing the impugned decree in any manner for the reason that the plaintiffs had purchased the land fully described in headnote of the plaint vide two sale deeds dated 06.02.1986 for an area of 14K-17M and 15K-16M respectively and since then, they have been in actual possession of the purchased land; originally the land was purchased by Jai Kaur mother of the defendants who had died leaving behind registered Will dated 19.03.1966 in favour of Mukand Singh; after her death, mutation of inheritance was sanctioned in the name of Darbara Singh, Jarnail Singh, Mukand Singh, Bibi, Kello and Sham Kaur; one of the defendants Darbara Singh had filed a civil suit No.274 dated 09.05.1980 claiming the entire land on the basis of a Will dated 25.06.1974 said to have been executed by Jai Kaur in his favour; that suit was decided on 17.03.1983 in which the Will set up by Mukand Singh was accepted whereas the Will propounded by Darbara Singh was rejected; the appeal against that judgment was dismissed by Addl. District Judge on 31.07.1985; thereafter, mutation of inheritance was sanctioned in favour of Mukand Singh on 28.01.1986; Darbara Singh

had filed a Regular Second Appeal before High Court, however, during pendency of that appeal, Darbara Singh in collusion with Mukand Singh and Jarnail Singh produced a registered Will dated 21.01.1973 allegedly executed by his mother Jai Kaur which was admitted by defendants Mukand Singh and Jarnail Singh without its genuineness being proved; in view of that, the High Court vide judgment dated 19.09.1986 declared Darbara Singh, Mukand Singh and Jarnail Singh owners in equal share.

According to the plaintiffs, they were not party to those proceedings and were not having knowledge of the same. Furthermore, Mukand Singh had no interest in the suit at the time of making the statement and he had no authority to compromise the matter in dispute and Will dated 21.01.1973 was not a genuine document; the original suit was not based on the said Will, therefore, on the basis of Will dated 21.01.1973, decree could not passed, as such, it is not binding upon the plaintiffs but when the defendants were adamant to execute and implement the collusive decree and dispossess the plaintiffs forcibly, the plaintiffs filed the suit in question.

2. On being put to notice, out of all the defendants, defendants No.1 & 2 appeared through counsel filing written statements whereas defendants No.3 to 6 did not appear despite service, as such were proceeded against ex parte. In the written statement filed by defendants No.1 and 2, they denied all the allegations in the plaint and raised legal objections. They prayed for

dismissal of the suit.

3. Plaintiffs filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

4. From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiffs are validly purchased the land as mentioned in para No.1 of the plaint? OPP.
2. Whether the sale in favour of defendants is hit by the rule of lis pendance? OPD.
3. Whether the decree dated 19.09.1986 passed by the Punjab and Haryana High Court is collusive and not binding on the rights of the plaintiffs on the grounds mentioned in the plaint? OPP.
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the suit has been properly valued for the purpose of court fee and jurisdiction? OPP.
6. Whether the defendants are entitled to special costs? If so, how much? OPD.
7. Whether the plaintiff is entitled to the declaration and injunction prayed for? OPP.
8. Relief

5. The parties were afforded sufficient opportunities to lead evidence in support of their respective claims.

6. After hearing arguments, the trial Court of Sub Judge, IInd Class, Giddarbaha, gave issue-wise findings and vide judgment and decree dated 16.11.1994 decreed the suit of the plaintiffs without costs observing that defendants have liberty to file a fresh suit for possession against the plaintiffs on the basis of registered Will dated 21.01.1973.

7. Feeling aggrieved by the judgment and decree passed by the trial Court, the defendant Darbara Singh had preferred an appeal

before District Judge, Faridkot, that appeal was assigned to Addl. District Judge, Faridkot, who vide judgment and decree dated 23.11.1996 had dismissed the appeal.

8. Still feeling aggrieved, appellant/defendant Darbara Singh has knocked at the door of this Court by way of filing the present Regular Second Appeal, notice of which was given to the respondents, who have put in appearance through counsel.

9. I have heard learned counsel for the parties besides going through the record.

10. The trial Court by close scrutiny of the pleadings of the parties and in depth analysis of the evidence adduced by them have come to the conclusion that defendants have failed to prove that Mukhtiar Singh had got power of attorney executed in his favour by playing a fraud and plaintiffs had proved the documents properly, therefore, denial by Mukand Singh of executing power of attorney in favour of his brother Mukhtiar Singh was of no value. The plaintiffs had proved the sale deeds and power of attorney Ex.P3 and P7 respectively whereas on the other hand, the defendants had failed to establish the plea of fraud and misrepresentation allegedly committed by the plaintiffs as pleaded in the written statement.

11. With regard to the plea of lis pendens taken as plaintiffs had purchased the land in suit during pendency of the appeal. The trial Court in para No.10 of the judgment has rightly come to the conclusion that Section 52 of the Transfer of Property Act dealing with doctrine of

lis pendens is not applicable as proceedings before this Court were collusive in nature. Though Will dated 21.01.1973 was found to have been duly proved by the defendants under Sections 67 and 68 of the Indian Evidence Act but the trial Court confined itself to the controversy before it where the decree passed by High Court dated 19.09.1986 was collusive between the defendants or not, verdict regarding which have been given in favour of the plaintiffs whereas the trial Court had granted liberty to the defendants to file fresh suit for possession against the plaintiffs on the basis of registered Will dated 21.01.1973. There is nothing on record to show that the defendants have filed any suit on the basis of registered Will dated 21.01.1973.

12. Similarly, learned Addl. District Judge was in agreement with the trial Court giving verdict that the sale deeds executed by Mukand Singh in favour of the plaintiffs were not hit by doctrine of lis pendens making reference to the litigation with regard to the property in question finding that the High Court had decreed the suit declaring Darbara Singh, Mukand Singh and Jarnail Singh as owners of the suit land in equal shares when Mukand Singh had already sold the entire suit land to the plaintiffs through four sale deeds and Mukand Singh and his brothers were not left with any right or interest in the suit land during pendency of the second appeal before the High Court. Learned Addl. District Judge, Faridkot has referred to judgment by **Gurmit Singh Vs. Attar Singh**, 1984 RLR 196 in support of the contention

that where the decree was collusive that doctrine of lis pendense will not be applicable. The entire discussion is there in para No.8 of the judgment by learned Addl. District Judge, Faridkot.

The second point discussed was whether the Will can be declared to be genuine on the basis of compromise effected by beneficiaries of the Will. Discussion in that regard is there in para No.9 of the judgment, observing that a Will declared to be genuine on the basis of compromise among the beneficiaries cannot be acted upon and the compromise cannot exclude evidence required to prove the Will. It was further observed that until and unless the Will is proved, no grant of probate can be made merely by the consent of the parties.

13. With concurrent findings being there accepting the claim of the plaintiffs and rejecting the case set up by the defendants, I do not find any reason to upset the impugned judgments in this Regular Second Appeal. No substantial question of law arises in this appeal. The appeal is found to be without merit and is dismissed accordingly.

01.05.2023
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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No