

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

RSA-944-1997(O&M)

Reserved on:-24.5.2023

Date of Pronouncement:-31.5.2023

Lal Singh

...Appellant

Versus

Bikkar Singh through his LRs and others

...Respondents

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

Present: Mr.Kanwaljit Singh, Sr.Advocate with
Ms.Neha Anand Mahajan, Advocate
for the appellant.

Mr.PPS Tung, Advocate
for the respondents.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Bikkar Singh, Tara Singh and Kartar Singh – sons and Jangir Kaur – widow of Bachan Singh, all residents of village Chhiniwal Kalan, Tehsil Barnala along with one Saudagar Singh son of Kirpal Singh, resident of village Dhilwan Patiala, Tehsil Barnala, had brought a suit against defendants Lal Singh son of Nahar Singh and Sardara Singh son of Bachan Singh, both residents of village Chhiniwal Kalan, seeking a declaration that plaintiffs are owners in possession of the suit property and sale deed dated 15.4.1988 by Sardara Singh in favour of defendant Lal Singh is a sham transaction qua the rights of the plaintiffs, besides craving for grant of permanent injunction restraining the defendants from interfering in possession of the plaintiffs over the suit property.

2. As the version of the plaintiffs unfolded, defendant No.2

Sardara Singh along with plaintiffs was joint owner in possession of the suit property, however, Sardara Singh had sold 3 kanals 8 marlas of land out of said property to Bikkar Singh, Tara Singh and Kartar Singh plaintiffs on 17.11.1987 and thereafter he sold 8 kanals to Nazir Singh, Jagdev Singh and Ranjit Singh sons of Atma Singh; subsequently Sardara Singh sold 4 kanals 9 marlas being 89/2749 share to Saudagar Singh and then he again sold 4 kanals 9 marlas being 89/2749 share to plaintiff Saudagar Singh; Sardara Singh further sold 10 kanals 12 marlas to Tara Singh, Kartar Singh and Bikkar Singh on 26.10.1987; defendant Sardara Singh had executed sale deed on 15.4.1988 for Rs.30,000/- regarding khasra No.87//19/1/8-0, 12/2/2/2-4; although on 15.4.1988 defendant Sardara Singh was not left with any land in his name because he had already sold more than his share, as such had no right to sell any property to the defendant Lal Singh; the sale deed dated 15.4.1988 is against the rights of the plaintiffs and is a fabricated document; defendant Lal Singh treating himself to be co-sharer in the suit property tried to take forcible possession.

As pleaded by the plaintiffs, the suit property is a joint Hindu family coparcenary property and the alleged sale was not for the welfare of the joint Hindu family and it was without consent of the plaintiffs; on 29.10.1987, an injunction order had been issued against defendant Sardara Singh restraining him from selling khasra number 87//19/1(8-0), 12/2/2//2-4. According to the plaintiffs, they had requested the defendants to admit their claim but they refused, giving rise to a cause of action to the plaintiffs to bring the suit in question.

2. On being given notice, both the defendants appeared.

In the written statement filed by defendant No.1, he had raised various legal objections challenging the locus standi of the plaintiffs to bring the suit; maintainability of the suit for the reason that plaintiffs were not in possession of the suit property. Such defendant claimed himself to be a *bona fide* purchaser for consideration without notice, as such protected under Section 41 of the Transfer of Property Act. Further legal objections taken by the answering defendant were that the suit was not properly valued for the purpose of Court fee and jurisdiction and it was false suit, therefore, deserved to be dismissed with special cost of Rs.500/-; the plaintiff Jangir Kaur was not a necessary party and she had no right to challenge the alienation made by her son. On merits, the defendant No.1 admitted the relationship of the parties inter se but denied that the suit property was jointly owned by the parties, rather contended that the parties had been in separate possession of their shares on the basis of a private partition; the plaintiffs and defendant Sardara Singh were keeping separate residence and the sales allegedly made by Sardara Singh in favour of the plaintiffs and others were denied contending that if Sardara Singh had done any such thing, he had no right to do so because an injunction order was there operating against Sardara Singh restraining him from selling khasra number 87//19/1(8-0), 12/2/2(2-4) and he could not sell the property to anybody else except the answering defendant; the injunction order had been duly conveyed to Sardara Singh and if any alienation had been made that is not binding upon the answering defendant. Such defendant denied that Sardara Singh had sold more than

his share, rather it was alleged that Sardara Singh had sold property measuring 10 kanals 4 marlas to pay a debt, for treatment and other necessities. It was denied that Sardara Singh was not having any share in the suit property on 15.4.1988 or that he had no right to sell the property to Lal Singh; the sale deed dated 15.4.1988 by Sardara Singh in favour of Lal Singh was labelled as legal and binding upon the parties contending that Lal Singh being a co-sharer in the suit property, there was no question of taking forcible possession by the answering defendant. It was denied that suit property is joint Hindu family coparcenary property contending that Sardara Singh was a bachelor and the property sold by him was his self-acquired property, therefore, Sardara Singh did not require consent of the plaintiffs to effect any sale. Refuting the remaining assertions, such defendant prayed for dismissal of the suit.

Defendant No.2 filed a separate written statement, which is almost on the similar lines as that of defendant No.1. It was denied that defendant No.2 was not owner of the property sold vide sale deed dated 15.4.1988 on the date of its sale, rather it was contended that defendant No.2 had delivered it to Lal Singh and the sale deed by defendant No.2 in favour of Lal Singh was for legal necessity. This defendant also prayed for dismissal of the suit.

3. After filing of the written statement, during the course of proceedings, defendant No.2 had absented and was proceeded against ex-parte on 7.9.1992.

4. The plaintiffs had filed replication 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 plaintiffs are the owners in possession of the suit land? OPP.
2. Whether the sale deed dated 15.4.88 executed by defendant Sardara Singh in favour of defendant Lal Singh is null and void and ineffective against the rights of the plaintiffs? OPP.
3. Whether defendant no.1 is a bona fide purchaser of the suit land for a valuable consideration and without notice? OPD.
4. Whether the plaintiffs are entitled to the relief of injunction, as prayed for? OPP.
5. Whether the plaintiffs have got no locus standi/cause of action to file the suit? OPD.
6. Whether the suit has not been properly valued for the purposes of Court fee? OPD.
7. Whether the suit is not maintainable? OPD.
8. Whether the defendant No.1 is entitled to special costs of Rs.500/-? OPD.
9. Whether Jangir Kaur is not a necessary party? OPD.
10. Relief.

6. Subsequently two additional issues were framed vide order dated 30.10.1991, which are as under:

9A *Whether the suit land is Joint Hindu Family Coparcenary property of the parties as alleged? OPP.*

9b Whether the sale by Sardara Singh in favour of Lal Singh is for legal necessity and for benefit of estate?OPD.

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

8. After hearing the learned counsel for the parties, the trial Court of Sub Judge Ist Class, Barnala vide judgment and decree dated 21.9.1992 gave issue-wise findings and as a result thereof decreed the suit of the plaintiffs for declaration that the plaintiffs are owners in possession of the suit property and that the sale deed dated 15.4.1988 executed by Sardara Singh in favour of defendant Lal Singh is against rights of the plaintiffs and not binding upon them. By way of passing a decree for permanent injunction, the defendants were restrained from interfering in possession of the plaintiffs over the suit property.

9. Feeling aggrieved by the said judgment and decree, the defendant No.1 had filed an appeal in the Court of Additional District Judge, Barnala, who vide judgment and decree dated 5.2.1997 dismissed the appeal upholding the judgment and decree passed by the trial Court.

10. Being dissatisfied with the judgments and decrees passed by the Courts below, the defendant No.1 Lal Singh filed the present regular second appeal before this Court, notice of which was given to the respondents, who put in appearance through counsel.

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

12. In the instant case, plaintiffs along with defendant Sardara Singh being co-sharers in the joint property stand admitted and so is the

fact that Sardara Singh being a bachelor had executed several sale deeds with regard to his share in the suit property. The sale deed, which is impugned in the suit is dated 15.4.1988 by Sardara Singh in favour of defendant Lal Singh. The case of the plaintiffs is that on 15.4.1988 when Sardara Singh had executed a sale deed in favour of defendant Lal Singh, he was not left with any share in the suit property because he had already sold the land coming to his share vide different sale deeds. However, the defendant is defending sale deed as legal and valid document contending that as a matter of fact Lal Singh had filed a civil suit against Sardara Singh and in those proceedings vide order dated 29.10.1987, he had been restrained from selling khasra number 87//19/1(8-0), 12/2/2(2-4). The sale deed said to have been executed by Sardara Singh in favour of plaintiffs is dated 29.3.1988.

13. Now the thing to be seen is with regard to the legality of the sale deed, which had been executed by Sardara Singh through his attorney in favour plaintiffs on 29.3.1988. According to the defendants that sale deed is bad on account of having been executed in violation of the injunction order issued by the Court. With regard to sale deed dated 15.4.1988 executed by Sardara Singh in favour of Lal Singh that has been declared to be illegal, null and void by the trial Court. The trial Court has concluded that since Sardara Singh had already executed the sale deeds Ex.P2 to Ex.P5 in favour of the plaintiffs through his attorney, therefore, he was not left with any share in the land and sale deed executed by him in favour of Lal Singh was null and void. The objection raised by Lal Singh that sale deeds had been executed by Sardara Singh in favour of the

plaintiffs through his attorney and that too when injunction order was in operation, therefore, sale deeds Ex.P2 to Ex.P5 are not legal and valid documents was considered and rejected. It has been observed that the civil suit in which the stay order dated 27.10.1987 was passed had been ultimately dismissed, therefore the injunction order merged in the final order and the sale deeds, which had been executed by Sardara Singh through his attorney in favour of plaintiffs can certainly be not faulted or held to be illegal, null and void. Those sale deeds have neither been challenged by Sardara Singh nor declared to be illegal, null and void by the Court of competent jurisdiction. The trial Court referring to judgment reported in All India Reporter 1938, Lahore Page 220 has observed that a completed sale in contravention of an injunction order under Order 39 Rules 1 & 2 CPC is not a nullity as being without jurisdiction. The plaintiffs have rightly been held to be bona fide purchasers for consideration by the Courts below and sale deed dated 15.4.1988 by Sardara Singh in favour of Lal Singh was found to be illegal. It was observed that the co-sharers have been in joint possession and when Sardara Singh was not with any share in the joint property, he could not have possibly put Lal Singh in possession of any piece of land. The suit of the plaintiffs was rightly decreed by the trial Court.

14. Learned Additional District Judge, Barnala found himself in agreement with the trial Court and affirmed the findings of the trial Court on issues upholding the judgment and decree passed by the trial Court in the process dismissing the appeal.

15. As regards the judgments **Jagroop Singh and others Versus**

Boria Khan (dead) through LRs and others, 2009(1) RCR(Civil)697, Harbans Singh (Dead) through LRs Versus Rajinder Singh alias Kartar Singh & Ors., 2010(4) RCR(Civil) 348, Karan Singh and others Versus Rani Malik and another, 2017(4) RCR(Civil) 501, Jet Kumari Versus Girdhari Lal, 2003(3) RCR(Civil) 391, Pardeep Versus Naresh and others, 2023(1) Law Herald 22 and P. Retnaswamy Versus A.Raja and Another, 2008(5) RCR(Civil)529 referred to by learned counsel for the appellant, those are not applicable to the present case due to different facts and circumstances and the context in which such observations had been made.

16. With the concurrent findings having been recorded by the Courts below against the appellant/defendant, which are based on proper appraisal of evidence and correct interpretation of law and there being no illegality or infirmity with the impugned judgments and decrees passed by the Courts below, there is no ground to interfere with such impugned judgments and decrees in regular second appeal.

17. No substantial question of law arises in this appeal.

18. Finding no merit in the appeal, the same stands dismissed.

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

31.5.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No