

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

(1)

RSA-1926-2019 (O&M)

Date of Pronouncement: 28.03.2023

Suhrid Singh @ Sardool Singh

...Appellant

Versus

Randhir Singh and others

...Respondents

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

Present: Mr. Arvind Kashyap, Advocate for the appellant.

Mr. Sunil Chadha, Sr. Advocate with
Mr. B.S. Seemar and Mr. Tara Dutt, Advocates
for respondents No.1, 2, 4 & 5.

H.S. MADAAN, J.

1. Briefly stated facts of the case are that plaintiff Suhrid Singh @ Sardool Singh, aged 64 years son of Rajinder Singh, resident of village Sanauli, Tehsil Dera Bassi, District Mohali had filed a suit for declaration, permanent injunction and rendition of accounts against defendants Randhir Singh and three others, arraying Mrs.Sunanda, Mrs. Mohini Cheema, Mrs.Sohini Sandhu, Estate Officer, Chandigarh, Estate Officer, Greater Mohali, Administrative Development Authority (GMADA), Mohali, Sub Registrar, Dera Bassi, District Mohali as proforma defendants as well as Harman Paul Singh son of Jagdish Singh, a resident of U.K.

According to the plaintiff Sh.Waryam Singh son of Narain

Singh grandfather of late Sh.Rajinder Singh was proprietor of village Veela Bajju, Tehsil Batala, District Gurdaspur; Waryam Singh died on 12.12.1919 and his estate was mutated in equal shares in favour of his son Dalip Singh and grandson Rajinder Singh vide mutation No.319 which was incorporated in Fard jamabandi of the year 1919-20; Rajinder Singh died on 14.12.2005 at the age of about 100 years; on account of old age and chronic mental illness, he was confined to bed for the last may years and was under the influence of a woman, namely, Ravinder Kaur – defendant No.3; after death of wife of Rajinder Singh, who was mother of the plaintiff on 21.11.1972, Ravinder Kaur moved into ancestral House No.1015, Sector 21-B, Chandigarh and presented herself as wife of Sh.Rajinder Singh; she misused mental disability of Rajinder Singh and put plaintiff in an open prison status on the family farm; that land of village Veela Bajju, Tehsil Batala, District Gurdaspur had been inherited by late Sh. Rajinder Singh from his grandfather Sh. Waryam Singh and it had nature of joint Hindu Family Coparcenary property qua Rajinder Singh and his sons the plaintiff and defendant No.4; Rajinder Singh was karta of that family; defendants No.5, 6 and 7 being daughters of Rajinder Singh became members of coparcenary in share of Rajinder Singh; Rajinder Singh had sold his entire land of 142K-2M at village Veela Bajju to Bachan Singh and others for a sum of Rs. 21,000/-, vide registered sale deed dated 13.03.1954; out of sale proceeds of ancestral land of said village, Rajinder Singh had purchased 150 bighas 8 biswas of land at village Sanauli, Tehsil Rajpura now Derabassi from Sampuran

Singh son of Natha Singh of village Sanauli, vide registered sale deed dated 22.06.1954 in his own name as well as that of plaintiff and defendant No.4 in equal shares for Rs.15,000/-. However, Rajinder Singh at behest of defendant No.3 to retain the plaintiff in an open prison condition, isolation, penury, ineffective and unmarried without knowledge and consent of the plaintiff got partition report lodged in the roznamcha of patwari which did not bear signatures of the plaintiff and on the basis of said report, Rajinder Singh got the partition mutation sanctioned illegally from Assistant Collector-II, however, said partition was set aside by FCR, Punjab, vide order dated 24.04.2008; Sh. Rajinder Singh without any legal necessity or benefit of the estate sold the suit land of plaintiff in favour of defendant No.1 through different sale deeds dated 20.04.2001 for Rs.12,92,313/- (15 bighas 10 biswas), dated 24.04.2001 for Rs.12,92,13 (15 bighas 10 biswas) and dated 06.07.2001 for Rs.15,96,630/- (16 bighas 8 biswas) in favour of defendant No.2, vide sale deed dated 27.09.2003 for Rs.1,50,000/- (1 bigha 8 biswas); according to the plaintiff, the alleged Will dated 14.07.1975 in favour of defendant No.3 read with registered codicil dated 17.08.1988 purported to be executed by late Rajinder Singh in favour of defendant No.11 and gift deed dated 10.09.2003 purportedly executed by Rajinder Singh regarding H.No.1015, Sector 21-B, Chandigarh in favour of defendant No.4 as illegal and nonest in the eyes of law since those are product of misuse of mental debility of Rajinder Singh by defendants No.3 and 4 respectively.

2. According to the plaintiff, H.No.1461, Phase 3B2, Mohali was purchased vide sale deed No.446 dated 08.06.2001 by defendant No.3 with the sale proceeds of above said four deeds of the coparcenary property, therefore, it also became coparcenary property; the plaintiff claimed consequential relief of joint possession of the entire suit property and prayed to appoint a receiver for the same.

3. On getting notice, the defendants No.5 and 6 appeared and admitted the case of plaintiff by giving statements in the Court. They stated that they had no objection if the suit was decreed in favour of the plaintiff whereas defendants No.7 and 10 did not appear despite service and were proceeded against ex parte.

4. Defendants No.1 and 2 had put in appearance and filed written statement, contesting the suit, raising various legal objections contending that the suit was not maintainable; the plaintiff had suppressed true facts that the property was self acquired property of Rajinder Singh; Rajinder Singh, plaintiff and defendant No.4 were co-owners to the extent of 1/3rd share in the landed property; all of them have acquired 1/3rd share in the land measuring 150 bighas 8 biswas at village Sanauli with sale proceeds of ancestral property whereas H.No.1015, Sector 21-B, Chandigarh was constructed by Rajinder Singh after purchasing the plot with his own sources and the said house was transferred in the name of defendants No.1 and 2 since plaintiff was residing separately from his father since 1968; according to the answering defendants, Rajinder Singh was mentally and physically fit and was in a

position to do all his work till about a week before his death; defendant No.3 is legally wedded wife of Rajinder Singh and they were married after death of first wife of Rajinder Singh; defendant No.4 was in UK since 1963 till about a month before death of his father Rajinder Singh and plaintiff did not even attend last rites of his father; the answering defendants denied that defendants No.5, 6 and 7 are daughters of late Rajinder Singh and coparceners in the landed property so inherited by him from his forefathers.

5. According to the answering defendants, land measuring 150 bighas and 8 biswas was partitioned in the year 1978 and mutation No.824 dated 27.04.1978 of the partition was sanctioned; the plaintiff was hardly aged about 05 years at the time of purchase of land in his name by Rajinder Singh; according to the answering defendants, the partition of the land has been done by mutual consent of parties, vide report roznamcha No.366 dated 16.04.1978 and mutation No.824 dated 27.04.1978 has not been set aside by any Court; according to these defendants, Rajinder Singh had to sell the land of his share to maintain himself and his wife in their old age of 99 ½ years till 14.12.2005; in the end, such defendants prayed for dismissal of the suit.

6. Written statement filed by defendant No.3 is almost on the same lines as that of defendants No.1 & 2. Such defendant submitted that late Rajinder Singh had executed a Will, codicil and gift deed of the property which had been self acquired by him.

7. Defendant No.4 in a separate written statement filed by him

has also contested the claim of the plaintiff while craving for dismissal of the suit.

8. Counsel representing defendant No.11 had made a statement adopting the written statement filed by defendant No.4.

9. Plaintiff filed replication, controverting the allegations in the written statement whereas reiterating the averments in the plaint.

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

1. Whether the plaintiff is entitled for declaration as prayed for in the plaint? OPP.
2. Whether the plaintiff is entitled for injunction as prayed for in the plaint? OPP.
3. Whether the suit is not maintainable ? OPD.
4. Relief.

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

12. After hearing arguments, the trial Court of Civil Judge (Jr. Divn.) Chandigarh dismissed the suit vide judgment and decree dated 14.07.2015 by giving issue-wise findings inasmuch as issue No.1 was decided against the plaintiff and in favour of the defendants. The trial Court has given a clear finding that Rajinder Singh had purchased the land after selling the ancestral property in his own name and that of plaintiff and defendant No.4 in equal shares and mutation No.824 of partition was sanctioned on 27.04.1978 thereby showing that though initially it was an ancestral property but after partition it became self acquired property of the coparceners. It has further been observed that property i.e. 50 bighas 2 biswas of land in the name of Rajinder Singh

was a self acquired property. It being so, he had a legal right to dispose it of in the way he wanted. Therefore, the sale deeds executed in favour of defendants No.1 and 2 are legal.

13. It has further been observed that the plaintiff has challenged the gift deed of H.No.1015, Sector 21-B, Chandigarh claiming that it was ancestral property but he had not brought on record oral or documentary evidence to show that the house in question was purchased from ancestral property, rather on the contrary defendants have examined Anil Kumar, Sub Inspector, Estate Office, Chandigarh as DW4 who had stated that loan was sanctioned on 29.03.1956 to R.S. Bindra (name appears to be wrongly typed) and same was disbursed and the entire amount was paid in the year 1978, therefore, the defendants have been able to show that Rajinder Singh had taken a loan for construction of house and the same had been repaid by him. Therefore, the house in question was self acquired property of Rajinder Singh in that way, he could execute the gift deed and gift deed executed by him is legal and valid.

With regard to allegations that Rajinder Singh was not in sound disposing mind. This aspect has been dealt with by the trial Court in detail in para No.15 of the judgment and considering the facts and circumstances of the case and evidence available on the record have returned a clear finding that Rajinder Singh was of sound disposing mind and he had executed a Will and gift deed out of his free will, therefore, both the documents are genuine and legal.

14. The Ist Appellate Court of Addl. District Judge, Chandigarh

by a close and minute examination of the facts and circumstances of the case and analysis of the evidence available, found itself in agreement with the trial Court on material issues in the process dismissing the appeal.

15. I do not find myself in disagreement with the Courts below with regard to findings recorded. Both the judgments are quite detailed, well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. I do not find any illegality or infirmity therein which might have called for interference by this Court in Regular Second Appeal. No substantial question of law arises in these appeal. The appeal is found to be without merit and is dismissed accordingly.

28.03.2023

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(H.S. MADAAN)

JUDGE

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