

RSA-4997 of 2019

2023:PHHC:161445

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

RSA-4997 of 2019

Date of decision: 14.12.2023

Balgair Singh and another

.....Appellants

Versus

Gurmeet Kaur and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. B.S. Jaswal, Advocate,
for the appellants.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 12.10.2016 passed by the Court of learned Civil Judge (Junior Division), Amritsar, whereby suit for declaration filed by appellant-plaintiff was dismissed as well as against the judgment and decree dated 30.05.2019 passed by the Court of learned Additional District Judge, Amritsar, vide which the appeal filed by the appellant-plaintiff against the judgment and decree of the trial Court, has also been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Briefly stated, plaintiffs filed a suit for declaration with consequential relief of permanent injunction pleading therein that originally Thakur Singh and Asha Singh were owners in possession of the total land measuring 261 kanals and 1

marla in equal share and both of them died and the estate of Thakur Singh was inherited by nine legal heirs i.e. Bachan Singh, Tehal Singh, Kartar Singh, Ajaib Singh, Mohinder Singh, Gurnam Singh, Gurmukh Singh and Sharam Singh. It is further submitted that Thakur Singh during his lifetime sold land measuring 13 kanal 12 marlas and he remained owner in possession of 115 kanals and 19 marlas and as such the above said nine legal heirs inherited the said remaining land and they became owner in possession of 13 kanals approximately each. So defendant no.2 Gurmukh Singh was owner and in possession of 13 kanals of land inherited by him from his father. Sharam Singh died issueless and during his lifetime sold 7 kanals 2 marlas and he left behind 5 kanals 18 marlas and after his death, his inheritance went to his above said brothers to the extent of 1/8th share and as such they inherited the estate of Sharam Singh to extent of 15 marlas each. So Gurmukh Singh became owner in possession of 13 kanals and 15 marlas. Bhajan Singh sold land measuring 2 kanals and 17 marlas and he also died issueless and his inheritance out of his remaining land went to 7 brothers to the extent of 1/7th share each and they inherited 1 kanal 8 marlas each from the estate of Bhajan Singh and as such Gurmukh Singh defendant no.2 became owner of 15 kanals 3 marlas. It is further submitted that defendant no.2 Gurmukh Singh sold the land 14 kanals 10 marlas to plaintiffs i.e. land measuring 8 kanals vide sale deed dated 25.2.1997 and 6 kanals and 10 marlas vide sale deed dated 12.4.2004. The possession was delivered to the plaintiffs on the basis of the sale deed and they came into actual and physical possession. The

mutations in the revenue record have also been sanctioned in their name. It is further averred that after the sale of land measuring 14 kanals 10 marlas in favour of the plaintiffs by Gurmukh Singh, Gurmukh Singh was left behind with only 13 marlas of land and except this 13 marlas he was not having any right to sell other land more than his share. It is further pleaded that defendant no.1 is alleging that she had purchased land measuring 4 kanals 12 marlas from defendant no.2. The alleged sale deed, if any, subsequently executed by Gurmukh Singh-defendant no.2 in favour of defendant No.1 is not binding on the rights of the plaintiffs and their sale deeds and the alleged sale deed in favour of defendant no.1 does not confer any right, title or interest over the said land except 13 marlas and as such the same is liable to be ignored being not binding on the right of ownership and possession of the plaintiffs over the suit land which they have purchased much earlier to the alleged sale deed of defendant no.1. It is further submitted that defendant no.1 on the basis of alleged sale deed in connivance with defendant No.2 started threatening the plaintiffs to dispossess them from the suit land and take forcible possession which the defendants have got no right, title or interest.

3. Upon notice, defendant no.2 was proceeded against *ex parte* vide order dated 20.1.2015. Defendant No.1 appeared and filed written statement taking various preliminary objections. On merits, it is submitted that it is correct that estate of Thakur Singh was inherited by his nine legal heirs but the plaintiffs have submitted the name of only eight legal heirs. It is also submitted that Thakur Singh was blessed

with 10 sons, out of which one son namely Inderjit Singh is pre-deceased to Thakur Singh, who was issueless and the plaintiffs have failed to disclose the name of said son of Thakur Singh namely Inder Singh. Defendant no.1 denied that defendant no.2 sold the land measuring 14 kanals 10 marlas i.e. land measuring 8 kanals vide sale deed dated 25.2.1997 and 6 kanals 10 marlas vide sale deed dated 12.4.2004. It is also denied by defendant no.1 that possession was delivered to the plaintiffs on the basis of sale deed and they came into actual and physical possession. It is further submitted that defendant no.1 has rightly purchased land measuring 4 kanals 12 marlas from defendant no.2 for valuable consideration and she is owner in possession of the aforesaid land. It is also denied that sale deed of defendant no.1 subsequently executed by Gurmukh Singh defendant no.2 in her favour is not binding on the right of the plaintiffs and their sale deeds and said sale deed in favour of defendant no.1 does not confer any right, title or interest of the said land. All other allegations were denied and prayer for dismissal was made.

4. Replication was filed in which all the averments in the plaint were reiterated and those in the written statement were denied.

From the pleadings of the parties following issues were framed:-

- 1) Whether the plaintiff is entitled to the declaration as prayed for? OPP
- 2) Whether the plaintiff has not come to the Court with clean hands? OPD
- 3) Whether the no cause of action to the file present suit? OPD
- 4) Whether the plaintiff are estopped by their own act and conduct from filing the present suit? OPD
- 5) Whether the present suit is not legally maintainable? OPD

6) Relief.

5. Parties led oral as well as documentary evidence in support of their respective contentions.

6. After hearing arguments and after appreciating evidence on record, trial Court dismissed the suit of plaintiffs vide judgment and decree dated 12.10.2016.

7. Aggrieved against the judgment and decree of the trial Court, plaintiffs preferred an appeal before the lower appellate Court, which has also been dismissed vide judgment and decree dated 30.05.2019.

8. Learned counsel for the appellants contended that the judgments and decrees passed by the Courts below are against the law and are based upon surmises and conjectures. He further contended that both the Courts below failed to appreciate that from the evidence on record case of the plaintiffs is fully proved that they have legally purchased the property. He further contended that judgments and decrees of the Courts below being erroneous are liable to be set aside.

9. I have heard learned counsel for the appellants and perused the record.

10. Appellant-plaintiffs filed suit for declaration pleading therein that they purchased 14 kanals 10 marlas of land i.e. land measuring 8 kanals vide sale deed dated 25.02.1997 and land measuring 6 kanals 10 marlas vide sale deed dated 12.04.2004 from respondent-defendant No.2 whereas defendant No.2 could not have

executed the sale deed dated 21.05.2013 in favour of defendant No.1 as he had only left with share of 13 marlas.

11. It is settled position of law that a party has to stand on its own legs and it cannot take the benefit of weakness of other party.

12. Both the courts below have recorded a concurrent finding that the plaintiff has failed to produce any clinching documentary evidence qua the share of defendant No.2, pertaining to the years 1997 and 2004, when the sale deeds were allegedly executed by him in favour of the plaintiffs. The plaintiffs have only produced the jamabandi for the year 1975-76 and 2010-11, but no revenue record of intervening period, depicting the share of defendant No.2 as on the date of death of Thakur Singh, Bhajan Singh and Sharam Singh has been brought on record. Moreover, the plaintiffs have not produced on record the pedigree table, showing the LRs of Thakur Singh from whom defendant No.2 has inherited his share.

13. Both the courts below after appreciating the evidence, have rightly recorded the finding that at the time of filing of the suit, defendant No.2 was residing with the plaintiffs, but they have never tried to bring him to prove their case. Furthermore, in sale deed dated 25.02.1997 (Ex.P-1), it is incorporated that Gurmukh Singh had received money for the purpose of his business and in sale deed 12.02.2004 (Ex.P-3), it is incorporated that he had already taken money for the purpose of construction of house. However, both the Courts below have recorded that Gurmukh Singh had no house of his own as such the doubt has crept in with regard to the fact of taking money for

construction of house and for domestic needs as mentioned in the sale deed.

14. Concurrent findings have been recorded by both the Courts below and learned counsel for the appellants has failed to show that the same are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

15. No question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

16. In view of the above, present appeal is dismissed.

14.12.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No