

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA-5242-2019 (O&M)

Date of Decision: 3.10.2023

Kashmir Singh now deceased through his LR's and another

....Appellants

VERSUS

Dharminder Singh

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Pritam Singh Saini, Advocate,
for the appellant.

KARAMJIT SINGH, J.

Present appeal has been filed by the appellants-plaintiffs against the judgment and decree dated 16.5.2019 passed by the Court of learned Additional District Judge, Patiala whereby the appeal filed by the appellants-plaintiffs against the judgment and decree dated 18.2.2016 passed by the Court of Additional Civil Judge (Sr. Division), Rajpura whereby the suit filed by the appellants-plaintiffs was dismissed, has been dismissed.

2. Brief facts of the case of the appellants-plaintiffs are that Kashmir Singh and Gurdial Singh were sons of Dalip Singh and the suit property was owned by them; that Gurdial Singh died prior to filing of the suit and appellant No.2-Kirpal Kaur was his legal heir; that Kashmir Singh and Gurdial Singh never executed any sale deed dated 27.2.1996 with regard to suit property in favour of respondent-Dharminder Singh and that the said sale deed is null and void and is not binding on the appellants-

plaintiffs. Accordingly, the appellants-plaintiffs filed suit for declaration to the effect that they are owners in possession of the suit land in equal shares and that the sale deed dated 27.2.1996 is illegal, null and void and is not binding on the appellants-plaintiffs. The appellants-plaintiffs also sought decree of permanent injunction to restrain the respondent from interfering into their peaceful possession over the suit land.

3. The suit was contested by respondent-Dharminder Singh who filed written statement wherein it was pleaded that Kashmir Singh and Gurdial Singh being owners of the suit property, sold the same to the respondent vide registered sale deed dated 27.2.1996 for valuable consideration and the vendors also handed over possession of the suit property to the respondent at the time of execution of the said sale deed which is a legal and valid document.

4. The appellants-plaintiffs filed replication controverting the averments made by the respondent in his written statement.

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

1. Whether plaintiffs are entitled for declaration as prayed for?
OPP
2. Whether plaintiffs are entitled for permanent injunction as prayed for? OPP
3. Whether plaintiffs have no cause of action to file the present suit? OPD
4. Whether suit of plaintiffs is hopelessly time barred? OPD
5. Whether plaintiffs have no locus standi to file the present

suit? OPD

6. Relief.

6. Kashmir Singh himself stepped into witness box as PW1 and also examined PW2-Swarnpal Singh, PW3-Pritam Singh and tendered copy of jamabandi Ex.P1 and Khasra Girdawari Ex.P2. During the pendency of the suit, Kashmir Singh died and copy of his death certificate Ex.P3 was also placed on record.

7. On the other hand, counsel for the respondent examined DW1-Kuldeep Kumar, Deed Writer, DW2-Nachhattar Singh, Patwari, DW-Shamsher Singh, Registration Clerk, DW-Kulwant Singh father of the defendant-respondent, DW-Avtar Singh @ Pappu and defendant-respondent/Dharminder Singh also stepped into witness box as DW8 and also examined Hand Writing Expert-Navdeep Gupta as DW9 and DW10-Lakhwinder Singh. Record of civil suit No.791R dated 30.8.2004/4.9.2012 titled Kulwant Singh v. Kashmir Singh decided on 7.5.2013 by the Court of Civil Judge, Junior Division, Rajpura was also produced by Record Clerk-Sawan Singh and the original sale deed in dispute dated 27.2.1996 was part of the said record.

8. After hearing the counsel for the parties, learned trial Court came to the conclusion that execution and registration of the sale deed dated 27.2.1996 Ex.P8 stands fully proved and it also stands proved that the said sale deed was executed for valuable consideration. The findings of the learned trial Court were also affirmed by the first appellate Court. Both the Courts below while passing the impugned judgments, held that the plea of fraud taken by the appellants-plaintiffs was neither specific nor the same

was proved by the appellants-plaintiffs by leading cogent and convincing evidence.

9. Counsel for the appellants-plaintiffs, while assailing the impugned judgments, *inter alia* contends that the sale deed dated 27.2.1996 was never executed by Kashmir Singh and Gurdial Singh in favour of the respondent with regard to suit property. It is further contended that at the time of execution of the alleged sale deed, the respondent was minor. It has been further contended that the sale deed in question is sham and is result of fraud and possession of the suit property was never handed over to the respondent. It has been further argued that the respondent never acquired any ownership rights over the suit property. It has been further contended that the impugned judgments are liable to be set aside.

10. I have considered the submissions made by the counsel for the appellants-plaintiffs.

11. Sale deed dated 27.2.1996 Ex.D1 was a registered document. It, therefore, carries presumption that the transaction was a genuine one. Further, it is fairly well settled that the fraud has to be pleaded and proved. In the instant case, no specific allegations of fraud were made in the plaint by the appellants-plaintiffs. Vague and general plea taken by the appellants-plaintiffs is not sufficient to prove the factum of fraud. In this regard, reference is also made to the provisions of Order 6 Rule 4 CPC which provides that in all cases in which party pleading relied on any fraud, misrepresentation, breach of trust, willful default or undue influence and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if

necessary) shall be stated in the pleadings. Thus, it is settled that the fraud has to be established by specific pleadings with sufficient proof.

12. In the present case, the scribe of the sale deed in question while appearing in the witness box as DW1 stated about the execution of the said sale deed and he also proved relevant entry of his register as Ex.D2 with regard to execution of the aforesaid sale deed dated 27.2.1996. DW4-Shamsher Singh, Registration Clerk proved the certified copy of the sale deed in question Ex.D1 which was got registered in the office of Sub Registrar concerned on 27.2.1996. Even father of the respondent while appearing in the witness box as DW6 also proved the execution of the sale deed in question as he signed the same on behalf of the vendee (respondent) who at the time of execution and registration of the sale deed was minor. DW7 identified signatures of his father late Pal Singh Lamberdar on the sale deed in question who signed the same as an attesting witness. Even the Hand Writing Expert while appearing in the witness box as DW9 proved his report Ex.D8 and photographic chart Ex.D9 to Ex.D25 and gave his opinion that the disputed thumb impressions of Kashmir Singh on the sale deed in question are identical to the standard thumb impressions of the said person. Even original sale deed dated 27.2.1996 which was part of judicial file of Civil Suit No.791R dated 30.8.2004/4.9.2012 titled Kulwant Singh v. Kashmir Singh decided on 7.5.2013 was also produced in the trial Court by Record Clerk-Sawan Singh. It has also come into evidence that the respondent was in possession of the suit land at the time of filing of the suit which was filed in the year 2009. So, the appellants-plaintiffs have failed to prove that no legal and valid sale deed dated 27.2.1996 was executed or

registered by Kashmir Singh and Gurdial Singh in favour of the respondent. Rather execution and registration of the aforesaid sale deed dated 27.2.1996 for valuable consideration stands fully proved as has been held by both the Courts below.

13. For the aforesaid reasons, I do not find any merit in the appeal so as to interfere with the impugned judgments passed by the Courts below. No question of law muchless substantial question of law arises for consideration in this appeal. Consequently, the present appeal is hereby dismissed.

(KARAMJIT SINGH)
JUDGE

October 3, 2023
Paritosh Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No