

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 5591 of 2015 (O&M)

Date of Decision: 05.01.2023

Reserved On: 01.09.2022

Sant Ram

... Appellant(s)

Versus

Mangal Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: None for the appellant.

Mr. Sachin Jain, Advocate
for the respondent No.1.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

2. While filing the second appeal, the plaintiff assails the correctness of the judgments and decrees passed on 06.11.2013 and 25.08.2015 by the Civil Judge (Junior Division), S.B.S.Nagar, and the Additional District Judge, S.B.S.Nagar, respectively.

3. The relevant facts, in brief, are that the plaintiff-Sh.Sant Ram filed a suit for grant of decree of declaration, to the effect that he is the owner in possession of the land/property measuring 0 kanals and 7 marlas

being 7/10th share in the plot measuring 0 Kanals and 10 marlas comprised

in khasra No. 235 (0-7) and 244 (0-3) situated in the residential area of the village Sarhal Quazian, Tehsil Nawanshahr, District Shaheed Bhagat Singh Nagar and the entries in the jamabandi for the year 1981-82 regarding the share of the plaintiff and the jamabandies for the subsequent years are against the facts, incorrect and are liable to be set aside, along with a consequential relief of permanent injunction restraining the defendant No.1 from alienating or transferring the suit land or from interfering in the possession of the plaintiff in any manner.

4. It is the cases of the plaintiff that Sh.Bachitter Singh, Sh.Jagtar Singh, Sh.Surjit Singh and Sh.Mohan Singh, who were the owners in possession of 7/10th share of the suit property, sold the same vide registered sale deed dated 05.09.1972 to late Sh.Babu Ram, the predecessor-in-interest of the plaintiff and defendant No.16 to 20. On the execution of the sale deed, the possession was delivered and in the revenue record, the mutation regarding the sale deed was entered and sanctioned in favour of late Sh.Babu Ram. Thereafter, late Sh.Babu Ram was in possession of the aforesaid land and after his death, the plaintiff is owner in possession of the land in dispute on the basis of the Will dated 25.04.1978 executed by late Sh.Babu Ram in favour of the plaintiff. While preparing jamabandi for the year 1981-82, the share of late Sh.Babu Ram was wrongly reflected as 7/40 instead of 7/10, resulting in reduction of his ownership from the plot measuring 7 marlas to 2.5 marlas. None of the defendants contested the suit.

5. The plaintiff, in order to prove his case, examined himself as PW.1 and produced the sale deed dated 05.09.1972 as Ex.P1, a copy of the Will dated 25.04.1978 as Ex.P2, copies of the jamabandies from the year

1976-77 to 2001-02 as Ex.P3 to Ex.P8. PW.2-Sh.Gopal Dass appeared in evidence and has supported the case of the plaintiff.

6. The trial Court dismissed the plaintiff's suit on the ground that not only he failed to prove the execution of the Will dated 25.04.1978 in accordance with Section 68 of the Indian Evidence Act, 1872 (hereinafter referred to as "the 1872 Act") but also failed to explain the suspicious circumstances surrounding the Will. The trial Court further held that the plaintiff has failed to trace the ownership of his vendor. In the first appeal, on permission granted, the plaintiff produced the jamabandi for the year 1971-72 (Ex.PX) in additional evidence, on perusal whereof, Court found that the suit property was transferred by Sh.Bachitter Singh, Sh.Jagtar Singh, Sh.Surjit Singh and Sh.Mohan Singh in favour of late Sh.Babu Ram. A photocopy of mutation No. 2299 from Sh.Bachitter Singh etc. in favour of late Sh.Babu Ram was also produced. The First Appellate Court still dismissed the appeal on the ground that the execution of the Will dated 25.04.1978 has not been proved.

7. Heard the learned counsel representing the respondent No.1 at length and with his able assistance, perused the paper-book. The learned counsel representing the respondent No.1 has also submitted the written arguments.

8. In my opinion, the judgments passed by both the Courts below suffer from material errors, resulting in the travesty of justice. In the absence of any opposition or contestation of suit by the defendants, the sale deed dated 05.09.1972, allegedly executed by Sh.Bachitter Singh, Sh.Jagtar Singh, Sh.Surjit Singh and Sh.Mohan Singh, should have been accepted by

the Courts particularly when it was a more than 30 years old document and

was produced from proper custody. Section 90 of the 1872 Act clearly enables the Court to draw a presumption as to the proper execution of a document which is 30 years old. It provides that the Court may presume that the signatures and every other part of such document, which purports to be in the handwriting of a particular person is in that person's handwriting and in the case where the document is executed or attested, it was duly executed and attested by the persons by whom it purports to have been executed and attested. Moreover, the copies of jamabandies carry a presumption of correctness in terms of Section 44 of the Punjab Land Revenue Act, 1887. In this case, it is evident that the plaintiff produced a copy of the jamabandi for the year 1971-72 in which the change of ownership of the land in dispute from Sh.Bachitter Singh, Sh.Jagtar Singh, Sh.Surjit Singh and Sh.Mohan Singh in favour of late Sh.Babu Ram is clearly reflected. It is the case of the plaintiff that in the jamabandi for the year 1976-77, late Sh.Babu Ram is shown to be the owner of 7/10th share, however, there was an error while preparing the jamabandi for the year 1981-82 wherein late Sh.Babu Ram's share was reduced from 7/10 to 7/40. In these circumstances, the main question which arose for consideration before the Court was "Whether an error has been committed by the revenue authorities in making the entry in the jamabandi for the year 1981-82?" In this case, the execution of the sale deed or ownership of Sh.Bachitter Singh, Sh.Jagtar Singh, Sh.Surjit Singh and Sh.Mohan Singh was never in dispute. Both the Courts below have erred in overlooking this aspect.

9. Moreover, both the Courts below have erred in refusing to grant declaration to the plaintiff particularly when even in the absence of the proof

of the registered Will dated 25.04.1978 by late Sh.Babu Ram in his favour, he is still a Class-I heir of the deceased. Hence, he was, undisputedly, entitled to a decree of declaration to the extent that he is one of the co-owners of the property. Both the Courts below have also erred in refusing to grant a decree of permanent injunction particularly when there is a sale deed in his favour.

10. Both the Courts below have overlooked the fact that civil cases are required to be decided on the preponderance of probabilities. Moreover, there was no contest to the fact that late Sh.Babu Ram had purchased the property to the extent of 7/10th share vide a registered sale deed dated 05.09.1972. In these circumstances, the only issue which required examination and discussion was with respect to the reduction of late Sh.Babu Ram's share. The plaintiff has successfully proved that late Sh.Babu Ram purchased the property to the extent of 7/10th share which was correctly incorporated in the revenue record, but subsequently, there was an error or an inadvertent omission, on the part of the revenue authorities, which, in the facts of the case, should have been ordered to be corrected by the lower Courts. Both the Courts below have also erred in failing to comprehend that the plaintiff being one of the legal heirs was *per se* entitled to protect the possession of the property particularly when the other heirs of late Sh.Babu Ram did not choose to contest the suit.

10. For the reasons recorded above, this Court considers it appropriate to set aside the judgments and decrees passed by both the Courts below. A decree of declaration is passed in favour of the plaintiff that he is one of the co-owners of the property sold in favour of late Sh.Babu Ram on

05.09.1972 by Sh.Bachitter Singh, Sh.Jagtar Singh, Sh.Surjit Singh and Sh.Mohan Singh and the entry in the jamabandi for the year 1981-82 which resulted in reduction of the share of late Sh.Babu Ram from 7/10 to 7/40 is hereby declared illegal, null and void. The revenue authorities are directed to correct the aforesaid entry in accordance with the relief granted in this judgment. The defendant No.1 to 15 are also restrained from alienating the said property to the extent of 7/10th share and interfering in the possession of the plaintiff in any manner

11. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

January 05, 2023
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No