

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

RSA No.1657 of 2018

Date of Decision: 03.10.2023.

Yudhister Singh and others

....Appellants

Versus

Raghubir Singh (Deceased) through LRs

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Rohiteshwar Singh, Advocate
for the appellants.

VIKRAM AGGARWAL, J.

1. This is defendant's appeal against judgment and decree dated 04.05.2017 passed by the Court of Additional District Judge, Pathankot, vide which the appeal filed by the appellants-defendants against the judgment and decree dated 05.09.2014 passed by the Court of the Civil Judge (Senior Division), Pathankot was dismissed. Vide judgment dated 05.09.2014, the Court of Civil Judge (Senior Division), Pathankot, partly decreed the suit for declaration filed by the respondent-plaintiff.

2. The respondent-plaintiff-Raghubir Singh filed a suit for declaration to the effect that the sale deed dated 27.05.2004 executed by appellants-defendants No.1 to 3 in favour of appellants-defendants No.4 and 5 with regard to land measuring 3 kanals 2 marlas (fully described in the plaint) (hereinafter referred as a disputed land) situated at Village Kiri Khurd, Tehsil Pathankot, District Gurdaspur was null and void and beyond the share of the appellants-defendants No.1 to 3. Consequential relief of permanent injunction restraining the appellants-defendants from interfering into the peaceful possession of the respondent-plaintiff as co-sharers was also sought. The case set up by the respondent-plaintiff was that he was a co-sharer in actual possession of the suit land and had

constructed three shops and two temporary structures over it. Appellants-defendants No.1 to 3 were also co-sharers but not in possession of any part of the disputed land. It was averred that they had executed sale deed dated 27.05.2004 in favour of appellants-defendants No.4 and 5 beyond their share. The subsequent mutations sanctioned on the basis of the sale deed were also challenged.

3. The appellants-defendants No.1 to 3 took a stand that the respondent-plaintiff himself had sold a particular portion of land and had in fact sold his entire share in the khata. He had concealed material facts from the Court. It was averred that there was a mutual agreement between the co-sharers with regard to the entire joint shamlat khata and all were in possession of separate lands including the disputed land and accordingly had validly alienated the disputed land to appellants-defendants No.4 and 5 vide sale deed dated 27.05.2004.

4. Defendants No.4 and 5 took the stand that they were *bona fide* purchasers of the disputed land for consideration and without notice of any previous right or title. It was averred that they had raised construction after the execution of the sale deed in their favour and prayed for dismissal of the suit.

5. The trial Court framed the following issues for adjudication:-

1. *Whether sale deed dated 27.05.2004 executed by defendants No.1 to 3 in favour of defendant No.4 is illegal, null and void?OPP*
2. *Whether plaintiffs are entitled to declaration as prayed for?OPP*
3. *Whether plaintiffs are entitled to permanent injunction as prayed for?OPP*
4. *Whether suit is not maintainable in the present form?OPD*
5. *Whether plaintiffs are stopped by their act and conduct from filing the present suit?OPP*
6. *Whether Civil Court has no jurisdiction to entertain and try the present suit?OPD*

7. Relief.”

6. Parties led their respective evidence.
7. The trial Court partly decreed the suit to the effect that the sale deed dated 27.05.2004 would not be binding upon the respondent-plaintiff beyond the share of the appellants-defendants No.1 to 3 and that the mutation No.1410 sanctioned on the basis of the sale deed would also be ineffective beyond the share of appellants-defendants No.1 to 3.
8. The First Appellate Court dismissed the appeal by upholding the findings of the trial Court.
9. I have heard learned counsel for the appellants and have perused the paper book.
10. Learned counsel for the appellants-defendants submitted that the Courts below erred in decreeing the suit filed by the respondent-plaintiff. It has been submitted that it was for the respondent-plaintiff to prove his own case by leading cogent evidence but the Courts below partly decreed the suit by holding that the appellants-defendants had not been able to prove that they were the owners in possession of land measuring 3 kanals 2 marlas (disputed land). It has been contended that the Courts below did not examine the matter from the correct perspective and did not appreciate the fact that the respondent-plaintiff had not approached the Court with clean hands. It has been contended that the suit land was a part of a big chunk of land and proper revenue record was not produced by the respondent-plaintiff.
11. I have considered the submissions made by learned counsel for the appellants-defendants No.1 to 3.
12. Before advertng to the merits of the appeal, it would be essential to observe that that the requirement of framing of a substantial question of law in second appeal in terms of the provisions of Section 100 of the Code of Civil

Procedure and as had been laid down in various pronouncements by the Hon'ble Apex Court including *Hero Vinoth (minor) versus Seshammal 2006 (5) SCC 545*, was subsequently held to be not there by the Hon'ble Apex Court. It was held that in the States of Punjab and Haryana, it is the provisions of the Punjab Courts Act, 1918 which would be applicable and, therefore, Section 100 CPC would not hold the field and, accordingly, there would be no requirement of framing substantial question of law in second appeal. With regard to the States of Punjab and Haryana, it was so held in *Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors. 2019 (3) R.C.R. (Civil) and Satyender and Ors. Versus Saroj and Ors. 2022 (12) Scale 92* respectively.

13. It was the specific case of the respondent-plaintiff that appellants-defendants No.1 to 3 had sold land measuring 3 kanals 2 marlas which was beyond their share. Appellant-defendant No.3-Rajinder Singh stepped into the witness-box as DW-1 and in his cross-examination, he deposed that they had alienated 3 kanals 2 marlas of land. He further deposed that as per the jamabandi for the year 1998-99, share of appellants-defendant No.1 was recorded as 1/384 and his mother's share was recorded as 1/96. The trial Court, therefore, came to the conclusion that defendants no.1 to 3 had 5/384 share in the disputed land and that they had not produced any evidence that they were owners of land measuring 3 kanals 2 marlas. The trial Court came to the conclusion that since the appellants-defendants No.1 to 3 had 5/384 share, they could have only sold the said share and, therefore, the sale deed beyond this share would be ineffective and not binding on the rights of the respondent-plaintiff. This finding was upheld by the First Appellate Court. Learned counsel for the appellants-defendants has not been able to pinpoint any illegality in the said findings. Initially learned counsel had stated that an application for additional evidence had been moved before the First Appellate Court. However, today during the course of arguments, learned counsel

submitted that no such application had been moved before the First Appellate Court and that the application had been moved before the trial Court and the same had been dismissed. Despite strenuous efforts, learned counsel could not convince this court that the findings recorded by the Courts below are illegal or arbitrary.

In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

03.10.2023

Rekha

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.