

2024:PHHC:058884

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

...Petitioners

...Respondents

"Suit for Declaration Decree to the effect that the plaintiff are owner in possession in respect of land measuring 11 Kanals 15 Marlas out of total land measuring 23 Kanals 10 Marlas bearing Khasra No 32// 18/1 (4-), 18/2 (1-14), 18/3 (1-18), 32//8/1 (4-0), 8//2 (3-3), 32//12/2/1 (0-8), 32//12/2/2 (0-15), as mentioned in the Jamabandhi for the year 2008-2009, situated in the area of village Sakhera Tehsil and District Tarn Tarran.

AND

"Suit for Declaration to the effect that the sale deed dated 20/10/1995 in respect of land measuring 08 Kanals 07 Marlas in favour of Bhgwan Singh son of Mohinder Singh and Mohinder son of Kishan Singh, is false, forged, fabricated, against law, null, void, abinito, without consideration, collusive, result of impersonation, unenforceable, does not affect the legal right of the plaintiffs & does not bind the plaintiff and is liable to be set aside.

AND

Suit for Declaration to the effect that the sale deed dated 11/07/1995 in respect of land measuring 07. Kanals 09 Marlas in favour of Warriam Singh son of Budh Singh son of Jetha Singh is false, forged, fabricated, against law, null, void, abinito, without consideration, collusive, result of impersonation, unenforceable, does not affect the legal right of the plaintiff & does not bind the plaintiff and is liable to be set aside.

AND

Suit for Declaration to the effect that the exchange/agreement dated 05/01/1996 in respect of land measuring 07.Kanals 09 Marlas beain No 149/152 share executed between Warriam Singh son of Budh Singh and Mohinder Singh son of Kishan Singh are false, forged, fabricated, against law, null, void, abinito, without consideration, collusive, result of impersonation, unenforceable, does not affect the legal right of the plaintiff & does not bind the plaintiff and is liable to be set aside.

With a decree of Permanent injunction to the effect that the defendants be restrained forever from interfering into the peaceful and lawful possession of the plaintiff over the total land measuring 23 Kanals 10 as fully detailed above forcibly illegally otherwise

than due course of law & from alienating the same in favour of the anybody else during the pendency of the case.

Or In the Alternative suit for joint possession in respect of land measuring 11 Kanals 15 Marlas out of total land measuring 23 Kanals 10 Marlas bearing Khasra No 32//18/1 (4-0), 18/2 (1-14), 18/3 (1-18), 32//8/1 (4-0), 8//2 (3-3), 32//12/2/1/(0-8), 32// 12/2/2 (0-15), 13 (7- 12), as mentioned in the Jamabandhi for the year 2008- 2009, situated in the area as mentioned in the Jamabandhi for the year 2008-2009, situated in the area of village Sakhera Tehsil & District Tarn Taran.”

4. Upon appreciation of the respective pleadings filed by the parties, the trial court settled the following issues:-

- “1. Whether the plaintiffs are entitled to declaration as prayed for? OPP*
- 2. Whether plaintiffs are entitled to decree for permanent injunction? OPP*
- 3. Whether in the alternative plaintiff are entitled to joint possession of the land in dispute measuring 11 K 15 Marlas as prayed for? OPP*
- 4. Whether suit land was partitioned vide legal valid agreement dt 19.2.1983 if its affect? OPP*
- 5. Whether sale deed dt. 25.4.1989, 11.7.95, 20.10.95 are legal and valid sale deed if so its affect? OPD*
- 6. Whether defendant No 3 & defendant No 5 entered into legal & valid exchange/ agreement dt 5.1.96 in respect of land measuring 9 K 9 M out of suit land OPD*
- 7. Whether the present suit is not maintainable?*

OPD

8. *Whether the plaintiff have not come to the court with clean hand? OPD*
9. *Relief.”*

5. The parties have led their evidence. When the case was at the stage of final arguments, the plaintiffs noticed that they have inadvertently missed out the relief of declaration qua sale dated 25.04.1989. Hence, the application was filed which as already noticed, was dismissed by the trial Court. The correctness of the aforesaid order has been challenged in this revision petition.

6. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

7. It is evident that the plaintiffs filed a suit on 25.07.2014, seeking decree of declaration with regard to multiple reliefs including declaration that the sale deeds dated 20.10.1995, 11.07.1995 and exchange deed dated 05.01.1996 are not binding upon their rights. While culling out the issues, the trial court framed issue No.5 with regard to the effect of the sale deeds including sale deed dated 25.04.1989, upon the plaintiffs.

8. Learned counsel representing the plaintiffs submits that they have already led sufficient evidence and they do not wish to lead any further evidence.

9. *Per contra*, the learned counsel representing the respondents submits that the period for challenging the sale deed dated 25.04.1989, has

already elapsed. Hence, the application has been correctly dismissed. He further submits that the plaintiffs previously also filed an application for permission to amend the plaint, which was allowed.

10. This Court has considered the submissions made by the learned counsel for the parties.

11. In fact, the trial court has failed to notice the distinction between the suit filed under Section 31 and 34 of the Specific Relief Act, 1963. Section 31 provides for filing a suit by the executant to seek annulment/rescission/cancellation of the instrument. Whereas, Section 34 provides for filing a suit for declaration with respect to the status or right in the property. Admittedly, the plaintiffs are not the executants of the sale deed. Seeking annulment/cancellation of the aforesaid instrument is not the desired relief. They are only required to file a suit for declaration that the aforesaid sale deed is not binding on their rights. In any case, the defendants shall be entitled to take objection with regard to limitation before the trial court. However, the trial court has erred in dismissing the application for permission to amend the plaint.

12. The trial court has also erred in observing that the amendment sought by the plaintiffs would change the nature of the suit. The plaintiffs have already filed a suit for declaration. Hence, there is no change in the nature of the suit.

13 The last reason assigned by the trial court to the effect that the plaintiffs have failed to show due diligence is also erroneous because the

plaintiffs have stated that they came to know that inadvertently, due to oversight no declaration was sought with regard to the aforesaid sale deed.

14 Keeping in view the aforesaid facts and discussion, the revision petitioner is allowed. However, the plaintiffs shall not be entitled to lead any further evidence as stated by the learned counsel representing the petitioners (plaintiffs). The defendants shall be permitted to lead evidence.

	(ANIL KSHETARPAL)	
	JUDGE	
30.04.2024		
neeraj	Whether speaking/reasoned :	Yes No
	Whether Reportable :	Yes No