

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

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**RSA No.561 of 2024 (O&M)
Reserved on : 29.02.2024
Date of Decision : 11.03.2024**

Avtar Singh & Anr.

....Appellants

VERSUS

Mehar Singh & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajesh Lamba, Advocate for the appellants.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the defendant Nos.4 and 8 against the judgment and decree dated 25.05.2016 passed by the Trial Court and the judgment and decree dated 23.01.2024 passed by the First Appellate Court whereby the suit of the plaintiff-respondent No.1 for declaration, possession and injunction was decreed.

2. The brief facts relevant to the present case are that as per the plaintiff-respondent No.1 he purchased the suit land comprised in Khasra Nos.9//8/2(3-6), 13(7-8), 18/1(2-9) measuring 13 Kanal 3 Marlas situated in Village Katakheri, Tehsil Fatehabad, District Fatehabad for consideration of Rs.7807.82 from Kashmir Singh and Balbir Singh vide registered sale deed No.1120 dated 19.05.1972 and since then had been owner in possession of suit land. Mutation was also sanctioned in favour of the plaintiff-respondent

No.1. It was averred that the plaintiff-respondent No.1 had never sold the suit land to the defendants No.1 to 4 and their brother Parampal Singh (predecessor in interest of the defendants No.5 to 7) nor the plaintiff-respondent No.1 had ever received any sale consideration from them. It was further averred that the defendants No.1 to 4 and said Parampal Singh, without any notice to the plaintiff-respondent No.1 and secretly from him and by impersonation through some other person and in collusion with their father Hardeep Singh son of Sarain Singh and alleged Harbans Singh Member Panchayat at Village Dhir, obtained a sale deed dated 28.10.1983 in respect of the suit land and got it registered in the office of Joint Sub-Registrar, Fatehabad on 28.10.1983. It was further averred that the defendants No.1 to 3 and said Parampal Singh in collusion with defendants No.4 and his wife (defendant No.8) transferred the suit land in favour of defendant No.4 and his wife defendant No.8. The sale deeds and resultant mutations were challenged being illegal, null, void and not binding on the rights of the plaintiff-respondent No.1. Hence, the suit. The defendants contested the suit and in the written statement averred that the plaintiff-respondent No.1 had executed the sale deed dated 28.10.1983 in favour of defendants No.1 to 4 and Parampal Singh and that the defendants No.1 to 4 and Parampal Singh were cultivating the suit land since before as tenants. It was stated that the plaintiff-respondent No.1 himself got executed the said sale deed in favour of defendants No.1 to 4 and Parampal Singh after appearing before the Registrar. Mutation had also been sanctioned in favour of defendants No.1 to 4 and Parampal Singh about which the plaintiff-respondent No.1 had the knowledge. It was denied that the sale deed dated

28.10.1983 was based on fraud. It was further averred that defendants No.1 to 3 and Parampal Singh, as per the family settlement, had got exchanged their land in favour of defendants No.4 and 8 as per judgment and decree dated 07.02.2007 on the basis of which mutation No.322 had been sanctioned in favour of defendants No.4 and 8. In their separate written statement the defendants No.4 and 8 averred that the plaintiff-respondent No.1 had executed the sale deed dated 28.10.1983 in favour of defendants No.1 to 4 and Parampal Singh after taking the amount mentioned in sale deed and that before 28.10.1983 the defendants No.1 to 4 and Parampal Singh were cultivating the suit land as tenants. According to defendants No.4 and 8, as per a family settlement the defendants No.1 to 3 and Parampal Singh had exchanged the suit land in favour of defendants No.4 and 8 as per judgment and decree dated 07.02.2007 on the basis of which mutation No.322 had been sanctioned in favour of defendants No.4 and 8. Replication was filed denying the averments made in the written statements and reiterating the facts mentioned in the plaint.

3. The Trial Court framed the following issues :

1. Whether the sale deed No.2320 dated 28.10.1983 is the result of fraud and impersonation and is liable to be set aside on the grounds mentioned in sub para (a) to (e) of para No.3 of the plaint ? OPP
2. Whether the plaintiff is entitled to be declared owner-in-possession of the suit land and for correction of the revenue record ? OPP

3. Whether the suit is bad for non-joinder and mis-joinder of necessary parties ? OPD
4. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
5. Whether the plaintiff has no cause of action or locus-standi to file the present suit ? OPD
6. Relief.

4. The Trial Court vide judgment and decree dated 25.05.2016 decreed the suit of the plaintiff-respondent No.1. It was found that the sale deed dated 28.10.1983 Ex.D1 was a result of fraud and impersonation and was liable to be set aside. Aggrieved by the said judgment and decree dated 25.05.2016 an appeal was preferred by the defendants No.4 and 8 which appeal was dismissed vide judgment and decree dated 23.01.2024. Hence, the present regular second appeal.

5. Learned counsel for the defendants No.4 and 8 (defendant-appellants) contended that the judgements and decrees of the Courts below are illegal and erroneous and that the suit of the plaintiff-respondent No.1 deserved to be rejected. It is contended that the suit was barred by limitation as the sale deed 28.10.1983 was challenged in 2011. It is also contended that the evidence on the record did not prove that the sale deed was a result of fraud and impersonation and therefore there was no occasion to decree the suit.

6. Heard counsel for the defendant-appellants and perused the paperbook.

7. A perusal of the impugned judgements and decrees shows that the Courts have found that the sale deed dated 28.10.1983 is a result of fraud and impersonation. The suit land was purchased by the plaintiff-respondent No.1 vide sale deed dated 19.05.1972 Ex.P1 for Rs.7807.82 but was allegedly sold by him on 28.10.1983 for Rs.1000/-. The defendant-appellants did not examine any attesting witness to the sale deed dated 28.10.1983 Ex.D1 nor examine any expert to show the sale deed Ex.D1 bore the thumb impression of the plaintiff-respondent No.1. After thorough appreciation of the evidence of the record the Trial Court held that *“Hence, from the above entire discussion, it is clear that the sale deed No.2320 dated 28.10.1983 Ex.D1 is the result of fraud and impersonation and is liable to be set aside and the subsequent transfer of the above land by the defendants No.1 to 3 and said Parmal Singh in favor of the defendant No.4 and defendant No.8 and mutation no.322 including jamabandi for the year 2009-10 to the extent of above land are liable to be set aside”*. The First Appellate Court also examined the evidence led by the parties and came to the conclusion that *“Ex.P-1 is the original sale deed no.1120 dated 19.05.1972 which reveals that the suit property was purchased by respondent no.1 from Kashmir Singh and Balbir Singh sons of Nagar Singh for a sale consideration of Rs.7807.82p/-. It is also evident from the sale deed Ex.P1 that the possession of the suit property was delivered to respondent no.1 by his vendors. The contention of the respondent no.1 is that he never sold the suit property of the appellants and proforma respondents and that the sale deed no.2320 dated 28.10.1983 relied upon by the appellants and proforma respondents is illegal, null and void and same has been obtained by them by impersonating*

him. This contention of respondent no.1 is worth merit and is corroborated by the testimony of PW-2 Shamsher Singh Malik, Handwriting and Fingerprint Expert who examined the thumb impressions allegedly that of respondent no.1 on the sale deed Ex.D1 with his specimen signatures. After comparing both the thumb impressions, PW-2 gave report Ex.PW2/B and opined that there is a fundamental difference of basic pattern in the two thumb impressions compared by him and as such the thumb impressions on sale deed Ex.D1 do not match with the specimen thumb impressions of respondent no.1. This fact clearly proves the stand of respondent no.1 that he never appeared before Sub-Registrar and that he never got executed the sale deed qua the suit property in favour of appellants and their brother deceased Parampal Singh. The appellants and proforma respondents have also failed to lead any evidence which prove that sale consideration of the suit property was given by them to the respondent no.1. As such, the learned Trial Court rightly held that sale deed Ex.D1 is a forged and fabricated document which does not bear the thumb impressions of respondent no.1 and that the suit property was never sold by respondent no.1 to appellants and their deceased brother". Even before this Court the counsel for the defendant-appellants is unable to point to any cogent and reliable evidence from which it can be deduced that the suit land was actually and legally sold by the plaintiff-respondent No.1 vide sale deed dated 28.10.1983.

8. Regarding limitation, the First Appellate Court has rightly placed reliance on the decisions in **Natha Singh & Ors. vs. The Financial Commissioner & Ors. [1982 CLJ 526 (DB)]** and **Jasbir Singh & Ors. vs. Mewa Singh & Ors. [2017(2) PLR 301]** to hold that since the sale deed

dated 28.10.1983 has been challenged by the plaintiff-respondent No.1 on the basis of fraud, the suit filed by him was well within the period of limitation. Fraud vitiates everything and the suit cannot be held to be barred by limitation. No other point was argued.

9. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

11.03.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO