



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

201

RSA-2839-1995 (O&M)
Date of Decision : 23.08.2024

JAGTAR SINGH (SINCE DECEASED) THR LR Appellant

VERSUS

JASWANT SINGH (SINCE DECEASED)
THR LRS AND ORS Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Arjun Dhaliwal, Advocate for the appellant.

Mr. Iqbal Singh Saggu, Advocate for respondents No.1 to 4.

Service of respondents No.6 to 30 dispensed with
vide order dated 05.11.1996.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the plaintiff-appellant challenging the judgments and decrees passed by the Trial Court dated 26.05.1992 and the First Appellate Court dated 05.10.1995.
2. Brief facts relevant to the present *lis* are that the plaintiff-appellant filed a simplicitor suit for declaration averring in the plaint that the suit land was originally owned and possessed by one Bishan Singh son of Lal Singh who died leaving behind five children i.e. three sons and two daughters, namely, Piara Singh, Sardara Singh, Tara Singh, Smt. Paro and Smt. Guro. On the death of Bishan Singh, his three sons i.e. Piara Singh, Sardara Singh and Tara Singh succeeded to his properties in equal shares. Piara Singh came in possession of 1/3rd share of the properties, as described

in the plaint. It was further the case that out of the land in his possession, Piara Singh mortgaged with possession 20 Kanals of land bearing Khasra Nos.61/14 (3-17), 61/15/1(2-16), 61/17/1(2-8), 82/1(3-15), 82/2(1-15), 82/3/1(0-9), 61/24(4-0) and 61/13(1-6) vide mortgage deed dated 10.06.1965 (Ex.P-2). Thereafter, the land of Piara Singh was attached in recovery proceedings and in an auction held on 10.12.1969 the plaintiff-appellant purchased the land of Piara Singh measuring 23 Kanals and 12 Marlas bearing Khasra No.276/1, 61/13, 14, 15/1, 17/1/2, 82/1, 2, 3/1, 61/24, 61/2/2, 22/1 for an amount of ₹4,000 - ₹4,800. Sale certificate (Ex.P-1) to this effect was also issued in favour of the plaintiff-appellant. Piara Singh and Tara Singh both expired and on their death the mutation of inheritance of Tara Singh was sanctioned in favour of his widow, namely, Harnam Kaur (defendant-respondent No.11) and since Piara Singh left behind no legal heir, his share was inherited by Sardara Singh, Paro and Guro. The mutation of inheritance of Piara Singh was challenged being illegal and not binding on the rights of the plaintiff-appellant. Hence, the suit.

3. Defendant-respondents No.1 to 5 contested the suit. The remaining defendant-respondents No.6 to 30 were proceeded against *ex parte*. In the written statement all the allegations were denied. It was averred that after the death of Bishan Singh his property was inherited by all his three sons and two daughters and not by his three sons only and as such all of them were having $1/5^{\text{th}}$ share each in his property. It was denied that Piara Singh was in possession of the Khasra numbers mentioned and having mortgaged the said Khasra numbers in favour of the plaintiff-appellant and

others. It was denied that the land was ever auctioned and the same was purchased by the plaintiff-appellant vide the sale certificate. It has also been denied that defendant-respondent No.5-Sardara Singh had transferred his entire share. It was further the case that mutation of inheritance of Piara Singh had rightly been sanctioned in favour of defendant-respondents No.5 to 7, namely, Sardara Singh, Guro and Paro, who in turn had sold their shares out of the joint Khata to defendant-respondents No.1 to 4, namely, Jaswant Singh, Kulwant Singh, Balkar Singh and Satpal Singh, respectively who are in possession of the suit land on the basis of the sale deed dated 06.07.1987. It was the stand taken that defendant-respondents No.1 to 4 had purchased the suit land vide the sale deed dated 06.07.1987 from Sardara Singh, Guro and Paro i.e. defendant-respondents No.5 to 7.

4. Replication was filed denying the contents of the written statement and reiterating those of the plaint.

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

1. Whether the plaintiff is the owner in possession of the property in suit, as alleged ? OPP
2. If issue No.1 is proved, whether the plaintiff is entitled to the injunction prayed for ? OPP
3. Whether suit is bad for non-joinder of necessary parties and cause of action ? OPD
4. Whether the suit is not maintainable in the present form ? OPD

5. Whether the suit is not properly valued for purposes of Court fee and jurisdiction ? OPD

6. Whether defendants No.1 to 5 are *bona fide* purchasers for valuable consideration, as alleged ?
OPD

7. Relief.

6. The Trial Court dismissed the suit vide judgment and decree dated 26.05.1992 holding that neither the sale certificate nor the mortgage deed were proved by the plaintiff-appellant. Aggrieved by the same, an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 05.10.1995. Hence, the present regular second appeal by the plaintiff-appellant.

7. Learned counsel for the plaintiff-appellant would contend that though one of the witnesses of the mortgage deed had appeared, the Trial Court had held the mortgage deed to be not proved as the middle pages were missing. It is further the contention that before the First Appellate Court the missing pages were filed along with an application for additional evidence and hence the mortgage deed stood proved. It is further the contention that the sale certificate was held to be not proved as the original was not produced. It is further the contention that certified copy of the sale certificate was produced and being a certified copy of an official document, the same was *per se* admissible in evidence.

8. *Per contra*, learned counsel for defendant-respondents No.1 to 4 would contend that neither the mortgage deed was proved in accordance with law nor the sale certificate was proved by leading any cogent evidence. Learned counsel has further contended that Jagtar Singh (PW-1) had admitted in his cross-examination that he was not present when the mortgage deed was executed. Learned counsel has further contended that there was no mutation entered qua the mortgage deed. Had there been any mortgage deed, some revenue entries would have been there. Even qua the sale certificate learned counsel would contend that there was no revenue entries nor was any official produced to prove the same.

9. I have heard the learned counsel for the parties.

10. In the present case reliance has been placed on two documents by the plaintiff-appellant - one being the mortgage deed dated 10.06.1965 (Ex.P-2) and the second being the sale certificate dated 15.12.1969 (Ex.P-1). The Trial Court had held that the original of the sale certificate (Ex.P-1) was never produced on the record. No permission was sought to prove the said sale certificate by way of secondary evidence and hence the issue was decided against the plaintiff-appellant. Regarding the mortgage deed, it was held that the same cannot be treated as proof of ownership. It was also found to be an incomplete document. Accordingly, the suit of the plaintiff-appellant was dismissed. Aggrieved by the same an appeal was preferred by the plaintiff-appellant. Before the First Appellate Court an application was filed by the plaintiff-appellant for additional evidence to produce the missing pages of the mortgage deed dated 10.06.1965 (Ex.P-2). Jagtar Singh, who stepped into the witness box, admitted that the mortgage deed was never executed in his presence. There is not an iota of evidence on the record to show that possession

was delivered to Jagtar Singh (the plaintiff-appellant herein) after the execution of the said mortgage deed inasmuch as there is not a single revenue entry qua the same. Though it has been argued by the learned counsel for the plaintiff-appellant that the sale certificate could be proved by way of the certified copy, which was *per se* admissible in evidence and hence the same stood duly proved, there was not a single revenue entry on the basis of the said sale certificate to show that the sale was ever effected in favour of the plaintiff-appellant. No mutation was shown to have been entered in the revenue record on the basis of the said sale certificate. No person from the concerned Department was produced to prove the fact that the sale had actually taken place. Further still, the suit itself was not maintainable for simplicitor declaration in the absence of having prayed for possession. It is proved on the record that the property was sold in favour of defendant-respondents No.1 to 4 and the possession was also delivered to them on the basis of the sale deed dated 06.07.1987. Without seeking possession, the suit for declaration itself was not maintainable though no argument has been addressed by the counsel for the plaintiff-appellant on the said issue. No other argument has been raised.

11. In view of the above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

23.08.2024

Aman Jain

(ALKA SARIN)

JUDGE

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