

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****120****RSA-4906-2019 (O&M)****Reserved on : 10.09.2024****Date of Decision : 25.09.2024**

Gurdeep Singh

....Appellant

VERSUS

Sukhdev Singh and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. P.K.S. Phoolka, Advocate for the appellant.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the defendant No.1-appellant challenging the judgment and decree dated 10.05.2018 passed by the Trial Court and the judgment and decree dated 22.07.2019 passed by the First Appellate Court whereby the suit for declaration and permanent injunction filed by the plaintiff-respondent No.1 was decreed.

2. The brief facts relevant to the present *lis* are that according to the plaintiff-respondent No.1, one Buta Singh was co-owner in possession of land measuring 23 Kanals 14 Marlas situated at village Mehma Bhagwana, Tehsil and District Bathinda and on 26.02.1999 the said Buta Singh, through his attorney Darshan Singh, sold the said land in favour of the plaintiff-respondent No.1. The sale consideration was paid by the plaintiff-respondent No.1 and possession of the said land was delivered to him at the spot and mutation No.1338 was sanctioned in favour of the plaintiff-respondent No.1. Subsequently, Buta Singh challenged the aforesaid sale deed dated 26.02.1999 by filing a civil suit alleging the same is a result of fraud. The said

civil suit was dismissed on 30.07.2008 by the Trial Court and the appeal by Buta Singh was also dismissed by the First Appellate Court on 17.04.2009. Thus, the plaintiff-respondent No.1 is the lawful owner of suit land and Buta Singh was left with no right, title or interest therein. Buta Singh also challenged the mutation No.1338 before the revenue authorities but the same was also upheld by the Commissioner, Faridkot Division, Faridkot vide order dated 12.10.2001. It was averred that the defendant No.1-appellant, with ulterior motive and to cause wrongful loss to the plaintiff-respondent No.1, connived with Buta Singh, who has since expired, and manipulated and prepared a Khangi Will dated 18.12.2010 allegedly executed by Buta Singh in his favour. On the basis of said forged and fabricated Will dated 18.12.2010, the defendant No.1-appellant got mutation sanctioned in his favour although the suit land had already been sold by Buta Singh during his lifetime to the plaintiff-respondent No.1. The defendant No.1-appellant further sold land measuring 9 Kanals 1 Marla in favour of defendant-respondent No.2 vide sale deed dated 03.05.2013 though the defendant No.1-appellant was not competent to alienate the same and said sale deed is illegal, null and void and without delivery of possession and merely a paper transaction. Hence, the present suit for declaration and permanent injunction. The defendant no.1-appellant contested the suit by raising objections about maintainability, non-joinder of necessary parties, locus-standi and cause of action. It was submitted that the plaintiff-respondent No.1 was not in possession over any portion of suit land or in exclusive possession and that Buta Singh had never sold the suit land to plaintiff-respondent No.1 through the alleged attorney Darshan Singh and that Darshan Singh was not competent to alienate the suit land and no amount of sale consideration was ever paid to

Buta Singh. The alleged sale deed dated 26.02.1999 was alleged to being a fictitious document. The defendant No.1-appellant defended the Will dated 18.12.2010 executed by Buta Singh in his favour. The defendant-respondent No.2 filed a separate written statement and defended the sale deed in her favour.

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

1. Whether the plaintiff is entitled to declaration as prayed for ? OPP
- 1A. Whether Will dated 18.12.2010 duly executed by Buta Singh in favour of defendant no.1 ? OPD1
2. Whether the plaintiff is entitled to permanent injunction as prayed for ? OPP
3. Whether the suit is not maintainable in the present form ? OPD
4. Whether the suit of plaintiff is bad for non-joinder of necessary parties ? OPD
5. Whether the suit is not properly valued for purposes of court fee and jurisdiction ? OPD
6. Whether suit of plaintiff is barred u/s 41 of Specific Relief Act ? OPD
7. Whether the plaintiff has not come to the court with clean hands ? OPD
8. Whether the plaintiff has no locus standi and cause of action to file the suit ? OPD
9. Whether the Civil Court has no jurisdiction to try the suit under Section 13, 34 and 158 of Punjab Land Revenue Act, 1887 ? OPD
10. Whether the suit is barred by limitation ? OPD
11. Whether the plaintiff is estopped by his act and conduct from filing the suit ? OPD
12. Whether defendant No.2 is bona-fide purchaser ? OPD2
13. Relief.

4. The Trial Court vide judgment and decree dated 10.05.2018 decreed the suit of the plaintiff-respondent No.1 declaring that he was owner of the suit land, mutation no.1612 dated 17.10.2012 and sale deed no.878 dated 03.05.2013 were set aside and the defendants were also restrained from alienating any portion of suit land. Aggrieved by the decision of the Trial Court two separate appeals were filed - one by the defendant No.1-appellant and the other by the defendant-respondent No.2. Vide judgment and decree dated 22.07.2019 both the appeals were dismissed by the First Appellate Court. Hence, the present regular second appeal by the defendant No.1-appellant.

5. Learned counsel for the defendant No.1-appellant has vehemently contended that both the Courts have erred in decreeing the suit of the plaintiff-respondent No.1. It is urged that the sale deed in favour of the plaintiff-respondent No.1 was illegal and that Buta Singh had bequeathed the suit land in favour of the defendant No.1-appellant vide Will dated 18.12.2010 and therefore the plaintiff-respondent No.1 could not be declared as owner of the suit land. It is urged that the defendant No.1-appellant was not a party in the earlier litigation.

6. Heard.

7. In the present case, Buta Singh was the owner in possession of the suit land who sold the same to the plaintiff-respondent No.1 vide sale deed dated 26.02.1999 (Ex.PW4/A). Buta Singh challenged the sale deed (Ex.PW4/A) on the ground of fraud. However, vide judgment dated 30.07.2008 (Ex.PB) his suit was dismissed. The appeal by Buta Singh was also dismissed vide judgment dated 17.04.2009 (Ex.PA). Thus, the sale in favour of the plaintiff-respondent No.1 stood upheld by the Courts. However,

on 18.12.2010, Buta Singh allegedly executed a Will in favour of the defendant No.1-appellant bequeathing the suit land in his favour. Once Buta Singh was left with no right, title or interest in the suit land having sold the same to the plaintiff-respondent No.1, he could not bequeath the same in favour of the defendant No.1-appellant by executing a Will. A testator can only validly bequeath what he owns or would own in future but not something which he once owned and has since sold. That apart, the defendant No.1-appellant did not even prove the due execution of the Will in his favour. Neither was the original Will produced in Court nor were its attesting witnesses examined. The reasoning adopted by the Courts is sound and equitable and this Court does not find any ground to interfere with the concurrent findings recorded. No other argument has been raised by learned counsel for the defendant No.1-appellant.

8. In view of the above, no question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

25.09.2024
jk

(ALKA SARIN)
JUDGE

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