

2024-PHHC-057592

108.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.5456 of 2019 (O&M)
Date of decision: 26.02.2024

Rajesh Kumar and others

... Appellants

Versus

Bimla Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

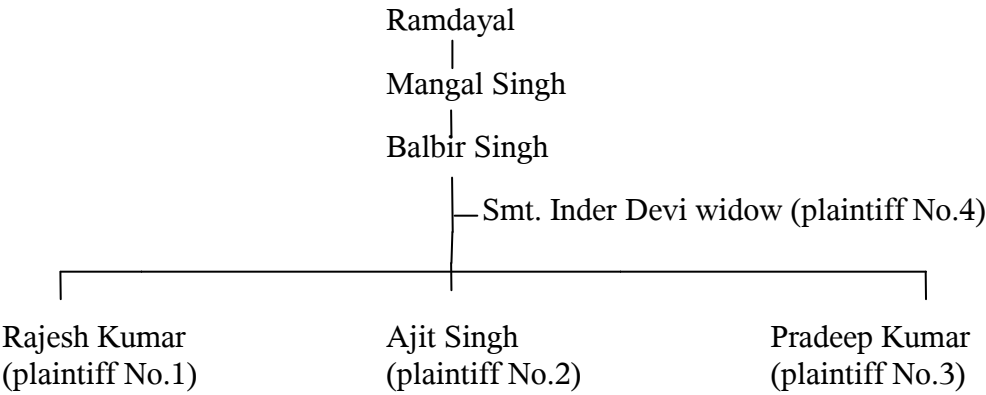
Present: Mr. J.P. Sharma, Advocate, for the appellants.

GURBIR SINGH, J.

1. Present regular second appeal has been filed by the plaintiffs against the judgment and decree dated 05.07.2019 passed by learned Additional District Judge, Narnaul, whereby their appeal against the judgment and decree dated 18.07.2016 passed by learned Civil Judge (Junior Division), Mahendergarh, has been dismissed.

2. The parties in the present appeal are being addressed as per their original status before the trial Court.

2.1 The case of the plaintiffs is that they constitute a Joint Hindu Family having ancestral joint land through their predecessor Ramdayal, as depicted below in the pedigree table:-



They got 1/6th share each in the suit land by virtue of mutation No.7588 dated 29.11.2008 of inheritance of Balbir Singh and, therefore, they became owners in possession of said share. Since their predecessor-in-interest Balbir Singh was in need of money, so he borrowed some amount from defendants, who on the pretext of getting pronote and receipt, got executed an agreement to sell without knowledge of Balbir Singh. It was pleaded that though said borrowed money was returned by their predecessor-in-interest Balbir Singh to the defendants but despite that, defendants got executed sale deed No.680 dated 05.07.1984 by way of deception, misrepresentation, fraud and under influence, which is illegal, null and void. On the basis of said sale deed, mutation No.5484 dated 14.08.1984 was sanctioned in favour of defendants. But since whole borrowed amount was paid to the defendants, so mutation was got cancelled. Under the impression of settlement of borrowed amount, their predecessor-in-interest Balbir Singh continued to be owner in possession of land comprised in rectangle/killla No.24//5 (3-0) and 25//1(7-7) measuring 10 Kanals 7 Marlas and after his death, plaintiffs became owner of his share. It is only when a dispute over land arose, plaintiff No.2 got certified copy of jamabandi and came to know about sale deed No.680 dated 05.07.1984 and its consequent mutation No.7867 dated 03.08.2011, which is illegal, null and void being sanctioned without any notice to the plaintiffs. It was further averred that plaintiffs are also the owners in possession of 207/2483th share equally in the land measuring 10 Kanals 7 Marlas of defendants in addition to their recorded share over

the land comprised in Khewat No.115, Khatoni Nos.220 to 223 measuring 124 Kanals 3 Marlas situated within the revenue estate of Village Basai, Tehsil and District Mahendergarh as per jamabandi for the year 2007-08 and they are entitled to get the said share incorporated in the revenue records i.e. record of right. Plaintiffs requested defendants not to interfere in their possession in any manner, but in vain.

2.2 Upon notice, defendants appeared and contested the suit by stating that admittedly the land comprised in rectangle/killi No.24//5 (3-0) and 25//1(7-7) measuring 10 Kanals 7 marlas was the ownership and in possession of predecessor of plaintiffs, namely, Balbir Singh son of Mangal Singh who, on his own free will, entered into an agreement to sell dated 18.06.1984 for the sale of suit land for consideration of Rs.20,000/- and received Rs.9,000/- as earnest money. It was submitted that Balbir Singh was a wise, literate person and Subedar in Military. In terms of said agreement, he executed sale deed dated No.680 dated 05.07.1984 in favour of defendants No.1 to 3 to the extent of half share and another half share in favour of defendants No.4 to 7. So by virtue of said sale deed, they became owner in possession of said land and mutation was also sanctioned. It was further submitted that when the defendants intended to sell said land, they came to know from the revenue records that mutation No.5484 dated 14.08.1984 (Ex.P2) which was entered in their favour, was cancelled. Thereafter, they approached the revenue authorities and on the basis of sale deed No.680, dated

05.07.1984, mutation No.7867 dated 03.08.2011 was sanctioned in their favour.

2.3 After appreciating the evidence on record, the trial Court dismissed the suit and the appeal filed against thereof was also dismissed. Aggrieved, the plaintiffs have approached this Court.

3. Learned counsel for the appellants-plaintiffs has argued that the sale deed dated 05.07.1984 Ex.P15 (Ex-DW3/B) is the result of fraud. Mutation No.5484, dated 14.08.1984 (Ex.P-2) and Mutation No.7867, dated 03.08.2011 (Ex.P-1) were wrongly sanctioned since said mutations dealt with specific numbers. Defendants had no exclusive possession on the suit property. So, there is no question of entry of mutations with regard to specific khasra numbers. The trial Court rightly held that the share of defendants in the suit property was joint. The plaintiffs are owners in exclusive possession of the suit property. The courts below have wrongly held that the suit is barred by limitation.

4. I have heard the submission of learned counsel for the appellants and have gone through the record.

5. The contention of the appellants-plaintiffs is that the sale deed No.680 dated 05.07.1984 Ex.P15 (Ex-DW3/B) is the result of fraud practiced upon the predecessor-in-interest of plaintiffs, namely, Balbir Singh. To substantiate said contention, plaintiffs examined Rajesh Kumar as PW1 and Ajit Singh as PW2. But these are mere oral statements which are hit by Section 92 of the Indian Evidence Act. The

said contention has rightly been discussed by the learned appellate Court in its judgment dated 05.07.2019. The operative part of said judgment reads as under:-

“9. During course of arguments, learned counsel for the plaintiffs submitted that sale deed Ex.P15 (Ex.DW3/B) was result of fraud. For substantiating this stand, plaintiffs themselves stepped into witness box as PW1 and PW2. Their self serving testimonies certainly are not sufficient for establishing the plea of fraud regarding execution of sale deed No.680 by Balbir in favour of defendants. Impugned sale deed is a registered document. It bears presumption of correctness unless rebutted otherwise. The oral testimony of PW1 and PW2 are not sufficient for proving the fact that Ex.P15 was result of fraud. None of the witnesses of the sale deed in question were brought into witness box. Moreover, vendor of the land in question never assailed the sale deed till he left this world for forever in year 2008. PW1 in his cross-examination quite succinctly admitted that he had knowledge of mutation Ex.P2 No.5484, on the basis of sale deed executed in year 1984. PW2 in his cross-examination stated that he had knowledge of the impugned sale deed when he was of 15-16 years. He stepped into witness box on 17.08.2015 by stating his age to be 30 years. So, he had knowledge of the sale deed since from the beginning. In the eyes of law when period of limitation starts running subsequent disability or inability cannot stop the same. Balbir never challenged the registered sale deed which he got executed in favour of defendants during his lifetime. Now, plaintiffs, have taken the plea that it was result of fraud but plaintiffs in the opinion of court could not

discharge their onus. It is imperative to mention here that the plea of fraud required cogent evidence.”

5.1 There is no explanation why Balbir Singh, during his life time, did not challenge the execution of said sale deed. There is no cogent evidence to prove the plea of fraud. On the basis of said sale deed, mutation Ex.P1 has been rightly sanctioned in favour of defendants. Predecessor-in-interest of plaintiffs Balbir Singh executed registered sale deed Ex.P15 (Ex-DW3/B) in favour of defendants on 18.06.1984, but during his lifetime, he never challenged said sale deed. From the cross-examination of PW1 and PW2, it was revealed that they had knowledge of the sale deed in question. Their statements were based on hearsay and so, inadmissible in evidence. The plaintiffs were required to stand on their own legs. There is no document to prove that the plaintiffs are in possession of suit property. The sale deed Ex.P15 (Ex-DW3/B) which is a duly registered document and bears endorsement of Sub-Registrar thereon to the effect of affixing of thumb-marks by the executor and attesting witnesses in his presence and the contents of entering into agreement to sell, receiving of sale consideration, cannot be simply negated on the basis of ocular testimonies of PW1 and PW2. Present suit, which was filed in 2012 for assailing the duly registered sale deed No.680, dated 05.07.1984 is certainly beyond the stipulated period of limitation. The plaintiffs failed to prove that sale deed Ex.P15 (Ex-DW3/B) was the result of fraud. Earlier mutation was cancelled on

technical ground since there was no person to oppose the same. Moreover mutation does not confer any title. Entries in the record of right are made for fiscal purpose only. Sanctioning of subsequent mutation on the basis of valid document of title is not illegal.

6. The courts below have recorded concurrent findings of facts. There is neither any misreading nor misappreciation of evidence. No substantial question of law is involved in the present appeal. The same is without any merit and is dismissed accordingly.

7. Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

February 26, 2024

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No