

2024:PHHC:074739



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. **RSA No.3463 of 2016 (O&M)**
Reserved on: 18.04.2024
Pronounced on: **27**.05.2024

Lachmi Devi (since deceased, through her LR) and others Appellants

Versus

Krishan Kumar and others Respondents

2. **RSA No.3237 of 2016 (O&M)**

Vijay Kumar Aggarwal and another Appellants

Versus

Krishan Kumar and others Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Ojas Bansal, Advocate, for
Mr. Sanjiv Kumar Aggarwal, Advocate,
for the appellants in RSA No.3463 of 2016 and
for respondents No.10 to 16 in RSA No.3237 of 2016.

Mr. Dheeraj Mahajan, Advocate,
for the appellants in RSA No.3237 of 2016 and
for respondent Nos.10 and 12 in RSA No.3463 of 2016.

GURBIR SINGH, J.

1. By this judgment, above said two appeals i.e. RSA Nos.3463 and 3237 of 2016, are being disposed of as these have arisen from the common judgment passed by learned lower Appellate Court in Civil Appeal No.25 of 2014, dated 04.01.2016.

2. The parties herein are being addressed as per their status in the suit.

2.1 Brief facts necessary for the disposal of present appeals are that Mani Ram and Sardha Ram were joint owners of land measuring 260 kanals 2 marlas. Sardha Ram sold his half share i.e. 130K-1M to Kalu Ram vide sale deed dated 06.11.1958. After the death of Mani Ram, his legal heirs i.e. Kamla (wife), Puran Chand, Mohan Lal, Faggu Ram (sons), Bimla and Lachmi Devi (daughters) inherited his estate of 130K-1M. Mani Ram was having another daughter, namely, Bala Devi, but she died and her husband married again. Puran Chand and Faggu Ram expired in 1974 and 1976 respectively. Puran Chand had shifted to Delhi in 1950 and since then, he had been residing there.

2.2 Defendant No.9-Mohan Lal, one of the legal heirs of Mani Ram, sold the entire land of 130K-1M fraudulently to one Krishan Kumar for Rs.2 lakhs without the consent of other legal heirs. Said sale was made in the form of an arbitration Award dated 19.03.1991 which was made as rule of the court vide civil court decree dated 26.08.1991, vide which, defendants No.1 to 8 became owners in possession of suit land.

2.3 The legal heirs of Faggu Ram and others filed a suit i.e. Civil Suit No.156 of 2011 titled as *Subhash Chand and others Versus Krishan Kumar and others*, against Krishan Kumar and others for declaration to the effect that award dated 19.03.1991 and civil court decree dated 26.08.1991 making the said award rule of the court, are illegal, null and void,

ineffective, inoperative and the same are liable to be set aside, and further the plaintiffs be declared as owners in possession of $1/12^{\text{th}}$ share with consequential relief of joint possession in the total property i.e. measuring 260K-2M. In the said suit, it was pleaded that the plaintiffs, defendant No.9 and proforma defendants No.10 to 21 were the owners in possession of 130K-1M of land. After the death of Mani Ram, his six legal heirs, namely, Kamla, Bimla, Lachmi Devi, Puran, Mohan Lal and Faggu Ram inherited his estate having $1/6^{\text{th}}$ share each in half of the land or in other words $1/12^{\text{th}}$ share in the total land measuring 260K-2M. Defendant No.9-Mohan Lal in collusion with defendants No.1 to 8 played a fraud with plaintiffs and proforma defendants No.10 to 21 and sold the entire land measuring 130M-1M to defendants No.1 to 8. It was stated that the plaintiffs and proforma defendants No.10 to 21 never appointed Mr. Rajiv Gupta, Advocate as Arbitrator. They neither took a sum of Rs.2 lacs from defendants No.1 to 8 nor possession was given to them. The award was not registered as required under Section 17(1)(b) of the Registration Act. After the award, defendants No.1 to 8 moved an application against defendant No.9-Mohan Lal, plaintiffs and proforma defendants under Sections 14 and 17 of the Arbitration Act for making the award dated 19.03.1991 as the rule of the Court. But no notice was served upon the plaintiffs and proforma defendants No.10 to 21. Surprisingly, on their behalf, one Mr. M.M. Goel, Advocate, filed memo of appearance on 14.05.1991, who was never authorized by them. On the other date of hearing i.e. 15.06.1992, Mr. Vinay

Bansal, Advocate, was shown to have filed Power of Attorney on their behalf but said Power of Attorney did not bear the signatures of plaintiffs and proforma defendants No.10 to 21. Said Vinay Bansal, Advocate, did not appear in the Court and ultimately, plaintiffs and proforma defendants were proceeded against ex-parte and defendants No.1 to 9 succeeded in getting the alleged award made, rule of the court. They further stated that it was only on receipt of summons in a suit filed by Kalu Ram, the other co-sharer in the total land measuring 260M-2M, against defendants No.1 to 5 wherein plaintiffs and proforma defendants were also made parties, the plaintiffs came to know about the entire fraud. Thereafter, plaintiffs and proforma defendants met defendants No.1 to 8 and told them that in fact they were the owners in joint possession of suit property, but their request was not acceded to. Hence, the suit was filed.

2.4 Upon notice, defendants No.1 to 8 appeared and filed written statement that plaintiffs along with defendants No.10 to 21 and defendant No.9 had taken Rs.2 lakhs from them and also handed over the possession of the land, in dispute, and since then, they had been owners in possession of suit property. It was submitted that no fraud was committed. On an application filed by the parties, Mr. Rajiv Gupta, Advocate, was appointed as Arbitrator, who, after hearing both the parties, passed an award dated 19.03.1991 declaring defendants No.1 to 8 as owners in possession of suit property measuring 130K-1M. For making the said award rule of the Court, defendants No.1 to 8 moved an application in which plaintiffs, proforma

defendants and defendant No.9 appeared through Mr. M.M. Goel, Advocate, on 14.05.1991 by filing memo of appearance and later on Mr. Vinay Bansal, Advocate, filed a duly signed Power of Attorney on their behalf in the Court. The plaintiffs were throughout following litigation but they did not opt to appear in the Court and ultimately, they were proceeded against ex-parte and the said award was made rule of the Court vide judgment and decree dated 26.08.1991 passed by the learned Civil Court. It was contended that the application vide which the award was sought to be made as a rule of the court was filed on 13.05.1991 whereas the decree was passed on 26.08.1991. The plaintiffs and proforma defendants were having the knowledge of the passing of the decree since beginning and, therefore, neither the award nor the decree were the result of fraud, as alleged.

2.5 After appreciating the evidence on record, the trial Court, vide judgment and decree dated 21.12.2011, decreed the suit of the plaintiffs and the award dated 19.03.1991 as well as civil court decree dated 26.08.1991 were set aside and the plaintiffs were declared as owners in joint possession of the land, as prayed for. The relevant extract of said judgment reads as under:-

“26. From the entire discussion above, it can be easily seen from the facts that the presence of the plaintiffs or performa defendants is nowhere found either in the award proceedings or at the time of passing the civil court decree, whereby said award was made rule of the court. From the entire circumstances, it can be smelled that certainly fraud has been committed with the plaintiffs because only signatures of the

persons, if at all is there on the file, is of defendant no.9 Mohan Lal for whom the power of attorney was filed by Vinay Bansal and whose signatures are legible on the Vakalatnama and if only his presence is there in the award proceedings, it can be easily seen that it was he only, who was aware of that application. **Due to the entire reasoning, this court is fully convinced with the assertions of the plaintiffs that they had never appeared before the arbitrator or before the court where the application for making that award as a rule of the court was filed by the defendants. The defendants have utterly failed to discharge their burden qua the fact that the plaintiffs and performa defendants had thoroughly participated at the time of passing the award as well as at the time of passing of decree whereby the said award was made rule of the court. Thus, this court feels that the award as well as civil court decree have been procured by the defendants clandestinely by playing fraud upon the plaintiffs and performa defendants. Hence, issue no.1 is decided in favour of the plaintiffs."**

However, while granting the relief, it was held as under:-

"29. As a sequel to the finding returned on issue no. 1 above, the suit of the plaintiffs is hereby decreed and the award dated 19.3.1991 as well as civil court decree dated 26.8.1991 wherein said award was made rule of the court is hereby set aside **qua the plaintiffs** and the plaintiffs are hereby declared as owners in joint possession of the land measuring 1/12th share in the total land measuring 260K-ZM or 1/6" share in the land measuring 130K-IM Decree sheet be prepared accordingly and file be consigned to record room after due compliance."

2.6 Against the said decree, before the learned appellate Court, two appeals were filed, one by the contesting defendants No.1 to 8, Krishan Kumar and others i.e. Civil Appeal No.24 of 2014 and another by proforma defendants Lachmi Devi and others i.e. Civil Appeal No.25 of 2014. It was contended by Lachmi Devi and others that Civil Suit No.156 of 2011 has been decreed 'qua the plaintiffs' only, whereas they were also co-sharers in the suit property whose interest was identical to that the plaintiffs in Civil Suit No.156 of 2011 being the legal heirs of Mani Ram. In the Civil Appeal No.25 of 2014, sons of Puran Chand were initially impleaded as respondents, however, they filed application seeking their transposition as appellants in the said appeal, which was ultimately allowed vide order dated 25.07.2014.

2.7 Vide judgment and decree dated 04.01.2016, learned lower Appellate Court dismissed the appeal filed by Krishan Kumar and others i.e. Civil Appeal No.24 of 2014 upholding the finding recorded by learned trial Court that the arbitration award dated 19.03.1991 and the civil court decree were the result of fraud.

2.8 The appeal i.e. Civil Appeal No.25 of 2014 filed by Lachmi Devi (since deceased, through her LR) and others, was also dismissed by recording the findings that "*appellants-proforma defendants Smt. Lachmi Devi failed to join the proceedings of the case at any stage during the pendency of the suit before the learned trial Court by way of filing written*

statement or counter claim. As such, at this stage of appeal, they do not deserve any relief.”

2.9 Aggrieved against the judgment and decree dated 04.01.2016 passed by learned Appellate Court in Civil Appeal No.25 of 2014, the appellants have approached this Court by way of two separate appeals. The appeal in RSA No.3237 of 2016 is by legal heirs of Puran Chand i.e. Laxmi Chand and Vijay Kumar Aggarwal, whereas RSA No.3463 of 2016 has been filed by other legal heirs, namely, Lachmi Devi (since deceased, through her LR) and others.

3. Learned counsel appearing on behalf of the appellants in both the appeals have argued that the appellants being the legal heirs of Mani Ram, are entitled to 1/6th share in the land, in dispute. The decree should have been decreed in toto and not qua the plaintiffs only as the plaintiffs and present appellants have common interest in the suit property being the legal heirs of Mani Ram. The appellants were never served in the suit. They were shown as residents of Village Gharaunda, Tehsil and District Karnal. It is unbelievable that how a notice through munadi can be served upon them when they are not residing at the address given in the civil suit. It has been argued that there is concurrent findings of fact that arbitration award dated 19.03.1991 and civil court decree dated 26.08.1991 making the award as rule of the court is the result of fraud played upon plaintiff and proforma defendants. It is settled principle of law that fraud vitiates everything. It is also submitted that the beneficiaries of the alleged award and civil court

decree have accepted the concurrent findings of fact and have not approached this Court. It has been prayed that the appeals be allowed and the suit may be decreed in toto and they are also entitled to 1/6th in the estate of Mani Ram being his legal heirs.

4. I have heard the submissions of learned counsel for the parties and have gone through the record.

5. The substantial questions of law which have arisen in the present appeals for consideration are:

- (i) Once the arbitration award dated 19.03.1991 and civil court decree dated 26.08.1991 making the award as rule of the court has been held to be the result of fraud, can it be allowed to operate against the interest of proforma defendants in the suit who are also the legal heirs of Mani Ram?
- (ii) Whether fraud vitiates everything and, therefore, the suit should have been decreed in toto and not only qua the plaintiffs?

5.1 In the present case, appellants, being the legal heirs of Mani Ram, are the co-owners like the plaintiffs in Civil Suit No.156 of 2011 and the relief should not have been restricted to the plaintiffs only and the decree should have been passed in toto. In case ***Smt. Usha Chand and others Versus Uday Singh @ Pappu Singh and others, Law Finder Doc Id # 1992202***, an authority of Patna High Court, it has been held that proforma defendant has same interest in suit property as that of plaintiff. If the plaintiff succeeds, proforma defendant also succeeds and if plaintiff

fails, proforma defendant also fails. There is no conflict of interest between plaintiff and proforma defendant as their right and interest are common and mutual, and benefit of judgment and decree passed in favour of plaintiffs will enure to benefit of proforma defendants also.

5.2 In the case in hand, the arbitration award dated 19.03.1991 and the civil court decree dated 26.08.1991 making the award as rule of the court, has been held as the result of fraud and the said findings has already attained finality and has never been challenged by the beneficiaries i.e. defendants No.1 to 8 in the original suit. In case ***Dinesh Singh and others Versus Har Pyari and others, 2019(2) PLR 367***, this Court has held that fraud vitiates everything. The court, after coming into knowledge of the fraud, would not permit the fraudulent action to operate and defeat the rights of the plaintiffs who are bona fide purchasers. Any benefit obtained under a fraudulent action cannot be allowed to be retained by the persons who have committed fraud.

5.3 In view of the aforesaid findings, this Court is of the considered opinion that both the substantial questions of law are required to be answered in affirmative in favour of the appellants by holding that the appellants being legal heirs of Mani Ram are also entitled to the declared as owners qua the suit property to the extent of 1/6th share as the arbitration award dated 19.03.1991 and civil court decree dated 26.08.1991 making the award as rule of the court have already been held to be the result of fraud and it should not be allowed to operate against the interest of appellants

who are the legal heirs of Mani Ram having identical interest as that of plaintiffs.

6. Keeping in view the above authorities and the fact the arbitration award and the civil court decree making the award as rule of the court, have been held as the result of fraud, the judgment and decree dated 21.12.2011 passed by learned trial Court, as upheld by the Lower Appellate Court, vide judgment and decree dated 04.01.2016 whereby the suit has been decreed only qua the plaintiffs, are hereby modified and set aside by decreeing the suit in toto by granting the relief to all legal heirs of Mani Ram who are entitled to 1/6th share in the suit property, who have identical interest as that of plaintiffs, in view of the findings recorded hereinabove.

7. Accordingly, both the appeals are allowed and the appellant No.1-Lachmi Devi daughter of Mani Ram (since deceased, through her LR) and appellant Nos.2 to 7 (legal heirs of Bimla, daughter of Mani Ram) in RSA No.3463 of 2016 and appellants in RSA No.3237 of 2016, namely, Vijay Kumar Aggarwal and Laxmi Chand sons of Puran Chand son of Mani Ram, are held entitled to 1/6th share in the suit property, being legal heirs of Mani Ram.

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

(GURBIR SINGH)
JUDGE

May 27, 2024
sanjeev

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No