

2024:PHHC:088442



108 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

**RSA-9656-2018 (O&M) in
Decided on:-16.07.2024**

Kaka Singh and others

....Appellants..

vs.

Sital Singh and another

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sukhvir Singh Tiwana, Advocate,
for appellants No.1, 2 and 4 (i to iv).

Mr. Nikhil Chopra, Advocate for appellant No.3.

HARKESH MANUJA J. (Oral)

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 03.02.2017 and 22.05.2018 passed by the Courts below, whereby, suit for declaration along with permanent injunction, filed at the instance of respondents No.1 & 2-plaintiffs (*hereinafter referred to as "plaintiffs"*), stands decreed.

2. Briefly stating, one Nasib Singh son of Puran Singh owned 9 kanals 13 marlas of land forming part of killa/Khasra No.18//4/2(5-16), 5(8-0), 19//3(7-5) and 8(8-0), situated in the revenue estate of village Gudana, Hadbast No. 285, Tehsil and District SAS Nagar (Mohali). Vide registered sale deed dated 04.06.1981, 08 kanals of land being his 160/581th share was sold by Nasib Singh son of Puran Singh in favour of plaintiffs and based thereupon mutation No.866 was entered in their names. Pertinently, Nasib Singh s/o Puran Singh happened to be husband of defendant No.1 and

father of defendants No.2 to 6. It was further pleaded that taking the benefit of some wrong entries in the revenue record, Nasib Singh son of Puran Singh executed different sale deeds in favour of appellants-defendants No.7 to 10 (herein-after referred to as defendants No.7 to 10) vide registered sale deeds dated 25.05.1984, 23.05.1985, 15.07.1986, 23.09.1987 and 10.01.1990, thereby affecting the rights of plaintiffs over the suit, the subsequent purchaser being threatening to dispossess them from the suit property.

Based on the aforementioned pleadings, the suit for declaration as well as permanent injunction came to be filed by plaintiffs while claiming themselves to be owner in possession of 8 kanals of land being purchased from Nasib Singh son of Puran Singh, vide registered sale deed dated 04.06.1981, besides seeking declaration to the aforementioned sale deeds executed by said Nasib Singh in favour of defendants No.7 to 10 being illegal and in-operative and not affecting their rights besides consequential relief of permanent injunction, restraining the respondents from alienating the suit property or disturbing their possession.

3. In response, two separate sets of written statements were filed on behalf of defendants. In the written statement filed on behalf of defendants No.1 to 6, the averments regarding Nasib Singh son of Puran Singh having alienated 08 kanals of land in favour of plaintiffs by virtue of sale deed dated 04.06.1981 was denied. Further, it was pleaded that defendants No.1 to 6 were owner in possession of the suit land left by deceased Nasib Singh, being his successors.

In the separate set of written statement filed on behalf of defendants No.7 to 10, it was pleaded that Nasib Singh son of Puran Singh

alienated his entire share in the joint property and defendants No.1 to 6 were left with no right, title or interest therein. Execution of sale deed dated 04.06.1981 in favour of plaintiffs was not disputed, yet, claimed their ownership based on the aforesaid sale deeds. On the basis of pleadings of the parties, following issues were framed:-

- “1. Whether the plaintiffs are entitled to the relief of declaration, as prayed for? OPP*
- 2. Whether the plaintiffs are entitled to the relief of permanent injunction, as prayed for? OPP*
- 3. Whether the suit is not maintainable in the present form? OPD*
- 4. Whether the plaintiffs have not come to the court with clean hands? OPD*
- 5. Whether the suit is bad for non-joinder and mis-joinder or parties? OPD*
- 6. Relief.”*

4. The trial Court vide judgment and decree dated 03.02.2017 decreed the suit filed at the instance of plaintiffs. Aggrieved thereof, two separate set of appeals were filed. Civil Appeal No.PBSA01001381-2017 was filed on behalf of defendants No.7 to 10, whereas, Civil Appeal No.PBSA01001211-2017 was filed on behalf of defendants No.1 to 6. Both the appeals came to be decided by the Court of Additional District Judge, SAS Nagar Mohali, vide judgment and decree dated 22.05.2018. Civil Appeal preferred on behalf of defendants No. 1 to 6 was dismissed, whereas, certain modification was done qua the rights of defendants No.7 to 10 in their appeal.

5. The sole grievance of the appellants-defendants No.7 to 10 in the present appeal is about the observations made by the First Appellate Court, wherein, their sale deeds have been held to be illegal, null and void

not affecting the rights of the plaintiffs to the extent that they are subjected to adjustment towards prior sale deed dated 04.06.1981 executed in favour of plaintiffs.

Learned counsel for the appellants submits that no doubt all the subsequent sale deeds need to be adjusted while protecting the alienation made in terms of the prior sale deed dated 04.06.1981, in favour of plaintiffs, yet, the observations made by the First Appellate Court, declaring the sales deeds in favour of defendants No.7 to 10 in *toto* being illegal, null and void, in such circumstance, was uncalled for.

6. I have learned counsel for the appellants and gone through the record. In the humble opinion of this Court, the apprehension expressed by the appellants has already been taken care of by the learned First Appellate Court. The operative portion from the judgment passed by the first Appellate Court is extracted hereunder:-

“In view of the above discussion, I find no merit in both the above referred appeals and as such the same are hereby dismissed, but the judgment and decree of the trial Court is modified to the extent that the plaintiffs are declared as owners in possession of the suit land, as fully detailed in the head note of the plaint and further declaration is granted to the effect that sale deeds dated 25.05.1984, 23.05.1985, 15.07.1986, 23.09.1987 and 10.01.1990 executed by Nasib Singh son of Puran in favour of defendants No.7 to 10 pertaining to the suit property are illegal, null and void and does not effect the rights of the plaintiffs to the extent that they are subjected to adjustment on the basis of prior sale deed in favour of plaintiffs dated 04.06.1981. Defendants are also restrained from selling, mortgaging, gifting, exchanging or alienating or by any other mode, the suit property and also from interfering into use and peaceful possession of the plaintiffs and forcibly dispossessing the plaintiffs from the suit property, except

in due course of law. Decree sheet be prepared. Copy of this judgment be placed in the file of the connected appeal referred to above. Lower court record be sent back and appeal file be consigned to the record room.”

7. In the facts and circumstances of the present case, admittedly, vide registered sale deed dated 04.06.1981 (Ex.P-2), plaintiffs purchased 8 kanals of land being 160/581th share from Nasib Singh son of Puran Singh, who later made different alienation(s) out of the joint holdings in favour of defendants No.7 to 10-appellants, in such circumstances, no illegality or perversity can be found in the judgment and decree passed by the First Appellate Court, wherein, sale deed dated 04.06.1981 (Ex.P-2) executed by Nasib Singh son of Puran Singh in favour of plaintiffs has been protected and upheld declaring them to be the owners in possession and the subsequent alienations made in favour of defendants No.7 to 10 have been secured, subject to adjustment of share/holdings left with their common vendor.

8. In view of the aforementioned circumstances, apprehension expressed by the appellants to the effect that their sale deeds have been declared to be illegal, null and void, is wholly misplaced as the same have merely been held to be subject to adjustment in favour of plaintiffs on the basis of prior sale deed made on 04.06.1981 and the share/right of their common vendor Nasib Singh son of Puran Singh, left in the joint holdings.

9. Accordingly, the present appeal is disposed of.

10. Pending application(s), if any, also stand(s) disposed of.

16.07.2024

sonika

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No