

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****123****RSA-5898-2019 (O&M)****Date of decision: 05.02.2025****Sonu Singh****...Appellant(s)****Vs.****Sher Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Prashant Singh Chauhan, Advocate for the appellant.

*********NIDHI GUPTA, J.**

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit preferred by the plaintiff for declaration and permanent injunction that the plaintiff along with performa defendant No. 4 is owner in possession of the half share of the suit land (as described in the plaint) to the extent of equal share each; whereas performa defendant No. 5 is owner in possession of half share of the suit land; **and** sale deed bearing vasika No. 815 dated 30.07.1990 executed by contesting defendant No. 1 in favour of contesting defendant No.2 as well as mutation No. 3826 be declared as null and void being procured illegally and fraudulently; **and** sale deed bearing vasika No. 689 dated 15.06.2009 and mutation No. 5440 dated 29.11.2009 be also declared null and void having been procured on the basis of fraud, collusion and misrepresentation. A further decree of



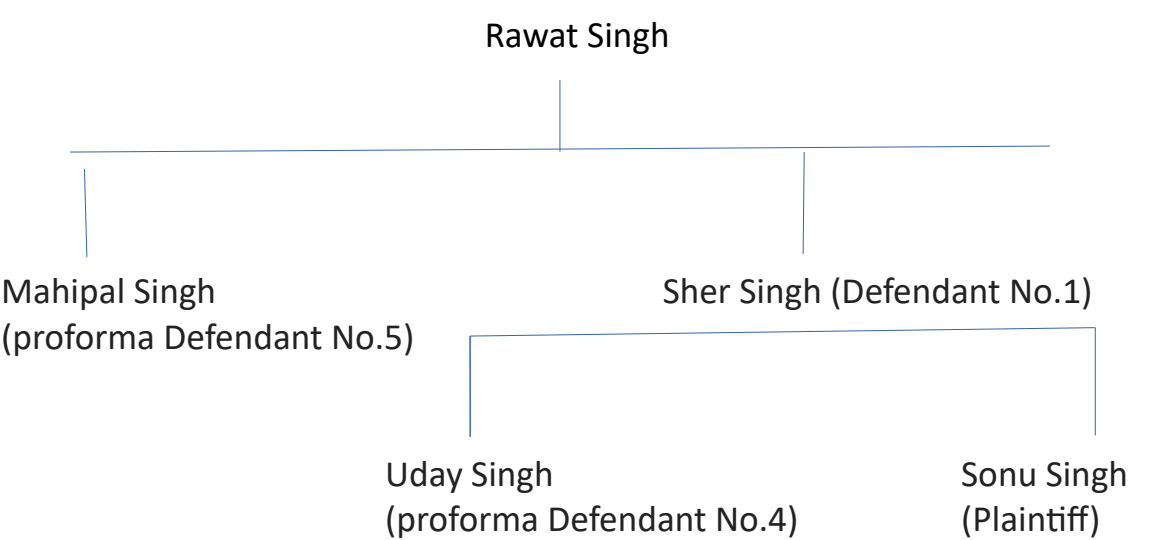
permanent injunction was sought restraining the contesting defendant No. 3 from interfering in the peaceful possession and cultivation of the plaintiff over the suit land.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff'; and the respondents are the 'defendants'.

3. Learned counsel for the appellant/plaintiff submits that the plaintiff is owner in possession of the suit property on the basis of the Civil Court judgment and decree dated 30.08.1991 Ex. PW4/A and Ex.PW4/B. On the other hand, the defendants are laying claim to the suit property on the basis of sale deeds alleged to have been executed in their favour by defendant No.1 who is father of the plaintiff, namely, Sher Singh. Learned counsel contends that Sher Singh never got executed the alleged sale deed dated 30.07.1990 in favour of defendant No.2. Sher Singh never appeared before the Sub Registrar, Mohindergarh and he had not received any sale consideration. It is alleged that defendant No.2 produced someone else on behalf of Sher Singh and fraudulently procured sale deed No. 815 dated 30.07.1990 in his favour. Thus the sale deed is not binding on the rights of the plaintiff and the perma defendants. Learned counsel contends that however, in passing the impugned judgments and decrees, the learned Courts below have failed to take into account this fact.

4. No other argument is raised on behalf of the plaintiff.

5. I have heard learned counsel for the plaintiff and perused the case file in great detail.
6. I do not find any merit in the contention of learned counsel for the plaintiff. The correct facts as borne out from the record are that no right accrues to the plaintiff. To establish this, it is necessary to appreciate the following facts:-



17. Sher Singh was the owner in possession of land measuring 4 Kanal 14 Marlas alongwith some agricultural land. The plaintiff has laid title to the suit property on the basis of the consent decree dated 30.08.1991 Ex. PW4/A Ex.PW4/B. However, it is pertinent to note that prior to the passing of the above said consent decree dated 30.8.1991, Sher Singh had sold his share of the suit land to Pratap Singh/defendant No.2 vide sale deed No. 815 dated 30.07.1990 Ex.PB for a sale consideration of Rs.11,000/- in respect of which mutation No. 3826 Ex.D was sanctioned. Pratap Singh/defendant No.2 further sold the said suit property vide sale deed No. 689 dated 15.06.2009 to Smt. Anuradha/defendant No.3 for a sale consideration of Rs.3,30,000/- in respect of which mutation No. 5440 dated



29.11.2009 Ex.DB was duly sanctioned. Thereafter, by way of 3rd sale deed No. 1562 dated 22.09.2010 Anuradha/defendant No.3 further sold the suit property to Satyanarayan/defendant No. 6 for a sale consideration of Rs. 6,46,250 in respect of which mutation No. 5524 was sanctioned. The plaintiff and performa defendants have laid title to the suit property on the basis of said consent decree dated 30.08.1991 passed by the learned Additional Civil Judge (Senior Division), Mohindergarh in Civil Suit No. 443 dated 06.08.1991 titled as "*Uday Singh and others vs. Sher Singh*". However, no right would occur to them from the said decree as admittedly, the sale deed No. 815 was executed by Sher Singh in favour of Pratap Singh on 30.07.1990, which is prior to passing of the above said consent decree dated 30.08.1991. In view of this fact, the learned Courts below have correctly held that the since the sale deed in favour of Pratap Singh/defendant No.2 was executed by Sher Singh *prior* to passing of the said consent decree, the appellant can claim no title from the same. It is also relevant that the plaintiff filed the present suit only on 28.01.2011.

18. It is further pertinent that Sher Singh himself had challenged the sale deed No. 815 dated 30.07.1990 executed in favour of Pratap Singh/defendant No.2 by way of Civil Suit No. 509 of 1993. However, the said Civil Suit filed by Sher Singh was dismissed for by the learned trial Court vide judgment and decree dated 14.01.2002. Admittedly, no appeal has been filed by the plaintiff or other proforma defendants against the said judgment and decree.



19. It is also relevant to note that in the present suit, two counter-claims were filed - the first by defendant No.1/Sher Singh in which he had challenged the above said 3 sale deeds and had sought relief of permanent injunction. Vide the impugned judgment and decree dated 18.04.2016 passed by the learned trial Court, the said counter-claim of defendant No.1/Sher Singh was dismissed.

20. The second counterclaim was filed in the present suit by defendant No.6/Satyanarayan seeking a declaration that the plaintiff and perform respondents have no right to interfere into peaceful possession; and they be restrained from taking forcible possession of the suit property. The said counter-claim by defendant No. 6 has been allowed by the learned trial Court vide impugned judgment dated 18.04.2016; and duly affirmed by the learned first Appellate Court vide judgement and decree dated 17.07.2019.

21. It may also be pointed out that one of the grounds on which the learned lower Appellate Court had non-suited the plaintiff is that in respect of the aforesaid two counter-claims, the plaintiff should have filed two appeals. It is the contention of the plaintiff that since it was the composite judgment and decree dated 18.04.2016 passed by the learned trial Court in respect of the civil suit of the plaintiff, as also two counter-claims filed by Sher Singh and Satyanarayan, hence, a single appeal was maintainable. In support, learned counsel for the appellant has relied upon a judgment passed by a Coordinate Bench of this Court in '**Rajesh Kumar vs. Dharamraj Singh**' Law Finder Doc Id # 1614903, wherein it is held that



the appellant could prefer a single appeal to assail findings of the trial Court both, in respect of decree passed in favour of the respondent as well as dismissal of his counter claim.

22. I am in concurrence with the view taken by the learned Courts below that the sale deed dated 30.07.1990 executed by Sher Singh in favour of Pratap Singh being prior to passing of the consent decree dated 30.08.1991; therefore, no right would flow to the plaintiff therefrom. Reference may be made to the relevant paras of the judgment dated 17.07.2019 passed by learned first Appellate Court, which read as under:-

“13. It is admitted fact that Sher Singh was exclusive owner in possession of the suit land as per jamabandi Ex.P2 for the year 1983-84. Plaintiff claimed that on the basis of oral family settlement, plaintiff and defendants no.4 and 5 became owner of the suit land alongwith some other agricultural land two years prior to the judgment and decree Ex.PW4/A and Ex.PW4/B dated 30.8.1991 passed in civil suit titled as Udai Singh Vs. Sher Singh and others. It is admitted fact that plaintiff is son of defendant no.1 Sher Singh. Defendant no.4 is son of defendant no.1 Sher Singh. Sale deed Ex.PB was got registered on 30.7.1990 by Sher Singh.

14. In the present suit, plaintiff who is son of Sher Singh challenged the sale deed Ex.PB dated 30.7.1990 executed by his father Sher Singh on the ground of misrepresentation, undue influence and fraud. But there is no concrete evidence that said sale deed was procured by defendant no.2 due to undue influence or fraud. Defendant no.1 Sher Singh is still alive and he is defendant no.1 in the present suit. Defendant no.1 has not dared to get his thumb impression compared with the thumb impression on sale deed Ex.PB. Mutation of said



sale deed was also sanctioned in the year 1990. Therefore, it cannot be said that said sale deed Ex.PB dated 30.7.1990 was procured by playing fraud with defendant no.1 Sher Singh. Even otherwise defendant no.1 Sher Singh filed a suit for challenging the said sale deed dated 30.7.1990 and said civil suit was dismissed as Sher Singh failed to lead any evidence.

15. The sale deed Ex.PB was executed on 30.7.1990. After the registration of sale deed Ex.PB, Sher Singh was not having any right, title or interest in the suit land. A Civil suit titled as Udai Singh Vs. Sher Singh and others was filed in the year 1991 and vide judgment Ex.PW4/A dated 30.8.1991, a decree was suffered by defendant no.1 Sher Singh in favour of plaintiff and proforma defendants no.4 and 5 on the basis of oral family settlement which took place about two years back. As defendant no.1 is father of the plaintiff and in these circumstances he was required to disclose the fact in the suit titled as "Udai Singh etc Vs. Sher Singh" that he has already sold the suit property by way of sale deed dated 30.7.1990. Considering the relationship between the plaintiff and his father defendant no.1 Sher Singh, the decree Ex.PW4/B dated 30.8.1991 appears to be collusive and merely by claiming in the civil suit titled as "Udai Singh etc Vs. Sher Singh" that oral settlement took place two years back is not sufficient to discard the registered sale deed dated 30.7.1990. Defendant no.1 Sher Singh has sold the suit property in favour of defendant no.2 Partap Singh for sale consideration of Rs.11000/- on 30.7.1990 vide sale deed Ex.PB and as said sale deed is legal and valid because Sher Singh was lawful exclusive owner of the suit property at the time of execution of sale deed dated 30.7.1990 and therefore the said sale deed cannot be set aside on the basis of decree suffered by defendant no.1 Sher Singh passed in



civil suit titled as "Udai Singh etc Vs. Sher Singh" after one year of the execution of sale deed Ex. PB dated 30.7.1990.

*16. It is admitted fact that defendant no.6 Satyanaryan filed counter claim and his counter claim was allowed vide judgment dated 18.4.2016. Appellant/plaintiff has filed only one appeal and he has not filed appeal against the counter claim. It is settled law that counter claim filed by the defendant is considered as a separate suit. In the present case, the suit of the plaintiff was dismissed and counter claim of defendant no.6 was allowed and in these circumstances plaintiff/appellant was required to file two appeals. As the plaintiff has filed only one appeal and therefore the present appeal is not maintainable. The authority titled as "**Teja Singh through his Mukhtiar-E-AM Raj Kumar Vs. Suresh Mittal and another RSA-3203-2017 (O&M)**" decided by Hon'ble Punjab and Haryana High Court vide judgment dated 10.9.2018 can be relied upon. In the said case also, the suit was dismissed and counter claim was decreed and plaintiff/appellant filed only one appeal and his appeal was dismissed mainly on the ground that he has not filed appeal against the counter claims which is considered as a separate suit."*

23. Learned counsel for the appellant/plaintiff is unable to dispute or controvert the above said facts and findings of the learned Courts below.

As such, the present appeal is **dismissed**.

24. Pending applications, if any, stand disposed of.

05.02.2025

Divyanshi

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

(NIDHI GUPTA)
JUDGE