

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****217****RSA-5148-2017 (O&M)****Date of decision: 28.04.2025****Nahar Singh and another****...Appellant(s)****Vs.****Jit Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Ms. Manmohan Kaur, Advocate for the appellants.

NIDHI GUPTA, J.**CM-13718-C-2017**

Prayer in this application filed under Section 5 of the Limitation Act read with Section Section 151 CPC is for condonation of delay of 54 days in filing the accompanying appeal.

Heard.

For the reasons mentioned in the application which is supported by an affidavit of the applicant/appellant No.1, the same is allowed and delay of 54 days in filing the accompanying appeal is condoned.

RSA-5148-2017 (O&M)

The defendants No.2 and 3 are in second appeal against the concurrent judgments and decrees of the learned Courts below; whereby the suit filed by the plaintiffs/respondents No.1 and 2 herein, for declaration that the registered Sale Deed No. 165 dated 04.06.2007; Sale Deed No. 178 dated 06.06.2007; and Sale Deed dated 182 dated



06.06.2007 are illegal; and permanent injunction restraining defendants No.1 to 3 from taking forcible possession and alienating the suit property except in due course of law, has been decreed by both the Courts below.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellants are the 'defendants No.2 and 3'; and respondents No.1 and 2 are the 'plaintiffs'.

3. Brief facts of the case as stated in the plaint are that the sale deed bearing number 165 dated 6.6.2007 was executed by defendants No. 4 to 6 in favour of defendants No. 1 and 2. Another sale deed bearing number 178 dated 6.6.2007 was executed by defendants no.7 to 9 through their power of attorney Makhan Singh in favour of defendants no.1 and 3. Sale deed bearing number 182 dated 6.6.2007 was executed by defendant no.10 in favour of defendant No. 1 and 2. It was further asserted that Zora Singh, predecessor-in-interest of defendants No. 5 and 6, had sold 1 kanal of land in favour of the plaintiffs through sale deed bearing No. 1067 dated 14.11.1991 (Ex.P5). Bikkar Singh, Darshan Singh, Malkiat Singh had sold 6 kanals of land to Sant Singh through document no.1011 dated 3.7.1980 (Ex.P2) and the same was exchanged with the plaintiffs, as is reflected through mutation no.9838. Bikkar Singh, Darshan Singh and Malkiat Singh also sold 6 kanals of land in favour of Pal Singh through document No. 1012 dated 3.7.1980 (Ex.P1) and the same was exchanged with plaintiff, as is depicted by mutation No. 9652. Nachhattar Singh and Zora Singh sold 8 kanals 10 marlas of land through sale deed bearing number 684 dated 12.6.1986 (Ex.P4) in favour of the plaintiffs and Narinder Kumar sold 3



kanals 10 marlas of land through document bearing number 816 dated 9.6.1986 (Ex.P3) in favour of the plaintiffs. The grievance of the plaintiffs being that defendants No. 4 to 10 had oversold their share, through the referred sale deeds, to defendants No. 1 to 3 which had no impact upon the rights of the plaintiffs. Defendant No.4 had sold the same land to Narinder Kumar measuring 3 Kanals 10 marlas which was purchased by the plaintiffs through document bearing No. 816 dated 3.7.1980. Citing the afore referred facts a prayer for grant of the sought relief was made by the plaintiffs by way of the present suit filed on 23.07.2007.

4. Upon notice, defendants No. 2 and 3 resisted the suit by filing composite written statement inter alia submitting that the suit was barred under Order 2 Rule 2 CPC as the plaintiff had already filed a suit seeking permanent injunction against defendants no.1, 3, 4 to 6 and 9. It was further stated that the defendants no.1 and 2 had purchased the suit property from defendants No. 4 to 6 through sale deed dated 4.6.2007. Similarly, defendants no. 1 and 3 had purchased another parcel of land from defendants No. 7 to 9 through their general attorney through sale deed bearing number 178 dated 6.6.2007. Defendants No. 1 and 2 purchased another parcel of land from defendant No. 10 through sale deed bearing number 182 dated 6.6.2007. The sale deeds propounded by the plaintiffs were stamped as forged and fabricated documents. Defendants asserted that they had inquired from the villagers and had inspected the revenue record prior to the purchase. As such, prayer for dismissal of the suit was made.



5. Defendants No. 4 to 10 filed a separate composite written statement in which the above said sale transactions referred by defendants no.2 and 3 were acknowledged. Defendant no.1 was proceeded exparte.

6. No replication was filed by the plaintiffs.

7. On the basis of pleadings of the parties, initially issues were framed on 04.08.2009. Subsequently, following issues were reframed on 23.10.2012: -

“1. Whether plaintiffs are entitled to declaration as prayed for?

OPP

1-A Whether plaintiffs are entitled to the relief of permanent injunction as prayed for? OPP

2. Whether suit is barred under order 2 Rule 2 CPC? OPD

3. Whether suit is liable to be stayed in view of section 10 CPC?
OPD

4. Whether suit is not maintainable? OPD

5. Whether suit is bad for non joinder of necessary parties?
OPD

6. Whether plaintiffs are estopped by their own act and conduct to file the present suit? OPD

7. Whether suit is not properly valued for the purpose of Court fee and jurisdiction? OPD

8. Whether defendants no.1 to 3 are bonafide purchasers of the suit land for valuable consideration as such they are protected u/s 41 of T.P.Act.

9. Whether the plaintiff has not complied with the provisions of order 7 rule 1(J)? OPD

10. Relief.”



8. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issues No. 1 and 1-A in favour of the plaintiff, issue No.2 against the defendants; issue No. 3 against the defendants; issues No. 4, 5, 7 and 9 against the defendants, issue No. 6 against the defendants, issue No. 8 against the defendant; and accordingly, vide judgment and decree dated 25.05.2015, the suit of the plaintiffs was decreed in the following terms:-

“In view of findings on the issues, it is held that plaintiffs are entitled to the relief of declaration that the sale deeds Ex D-1 to Ex D-3 are ineffective and void, to the extent they are in conflict with and against the rights of the plaintiffs as co-sharers in the suit property established by the sale transactions proved by the plaintiffs. As the principal relief has been granted to the plaintiffs, they are also held entitled to the grant of the consequential relief of permanent injunction and defendants No. 1 to 3 are permanently restrained from alienating the share of the plaintiffs in the suit property.”

9. The appeal filed by the defendants No.2 and 3 was partly allowed by the learned Additional District Judge, Moga vide judgment and decree dated 19.05.2017 and the trial court decree was modified. Hence, the present second appeal by defendants No.2 and 3.

10. It is *inter alia* submitted by learned counsel for the appellants that the learned Courts below were in error in decreeing the suit of the plaintiffs as they have failed to appreciate that the Sale Deeds whereby the plaintiffs are alleged to have purchased the suit land are forged and fabricated documents and have never seen the light of day. Furthermore, learned Courts below have heavily relied upon the evidence of PW1



Bachitter Singh. However, the learned Courts below have failed to appreciate that the Sale Deeds Ex.P1 and Ex.P2 were about the specific khasra numbers, whereas there is a documentary proof that the Sale Deeds Ex.P1 and ExP2 were about the shares. Learned Courts below have failed to appreciate that the appellants are the bonafide purchasers of the suit property vide Sale Deeds Ex. D1 to Ex.D3 for valuable sale consideration and without any notice.

11. It is submitted that the learned lower appellate Court rightly held that the Sale Deed Ex.D1 is valid to the extent of 22 Marlas. However, learned lower appellate Court failed to appreciate that Sale Deed Ex.D3 was also valid and well within the share of the vendor. It is accordingly prayed that the present appeal be allowed; and the judgments and decrees of the learned Courts below be set aside.

12. No other argument is raised on behalf of the appellants.

13. I have heard learned counsel for the appellants/defendants No.2 and 3 and perused the case file in great detail.

14. It has firstly been contended on behalf of the appellants that there is a discrepancy in the oral and documentary evidence led by the parties thereby proving that the sale deeds executed in favour of the plaintiffs were forged and fabricated documents. The said argument is liable to be rejected as in fact, the appellants have no right to the suit property. It has come on record that Zora Singh, the predecessor-in-interest of defendants No. 5 and 6 had sold 1 Kanal of land to the plaintiffs through Sale Deed No. 1067 dated 14.11.1991 Ex.P5. The said Sale Deed was proved



from the evidence of the Scribe/ PW2 who had deposed that he had scribed the Sale Deed dated 14.11.1991 at the instance of the vendor Zora Singh; which was also signed by Zora Singh; and was attested by marginal witnesses. The entry of the said Sale Deed in the register of Scribe PW2 was also proved as Ex.P6. Attesting witness PW3 also deposed that Sale Deed was thumb marked by Zora Singh in his presence and in presence of Mehar Singh and was followed by attestation of marginal witnesses.

15. The second sale transaction pertains to the alienation made by Bikkar Singh (father of defendants No. 7 to 9), Darshan Singh and Malkiat Singh (brothers of Bikkar Singh) in favour of Sant Singh in respect of 6K through Sale Deed dated 03.07.1980 Ex.P2. Attesting witness PW1 has deposed that the said Sale Deed was thumb marked by 3 persons in his presence as well as in the presence of Kartar Singh; and the same was followed by attestation of marginal witnesses.

16. Bikkar Singh, Darshan Singh and Malkiat Singh had sold another parcel of 6K to Pal Singh vide Sale Deed dated 03.07.1980 Ex.P2. The said Sale Deed was also proved by evidence of Bachitter Singh PW1. Thereafter, Sant Singh and Pal Singh had exchanged their shares in the suit land with the plaintiffs, as reflected through mutation nos. 9838 and 9652 Ex.P20 and Ex.P19 respectively. Thus, plaintiffs had become owners of shares of Sant Singh and Pal Singh, which had been purchased by them (Sant Singh and Pal Singh) from Bikkar Singh, Darshan Singh and Malkiat Singh vide Ex.P1 and P2.



17. Vide Sale Deed No. 684 dated 12.06.1986 Ex.P4 another parcel of land measuring 8K 10M was sold by Nachhattar Singh and Zora Singh to the plaintiffs. The Scribe of the said Sale Deed was examined as PW2, who proved the same by submitting that Sale Deed Ex.P4 was scribed by him at the instance of vendors Nachhattar Singh and Zora Singh; and the said Sale Deed was signed by vendors following the attestation of the witnesses.

18. Sale Deed no.816 dated 04.06.1986 Ex.P3 was executed by Narinder Kumar in favour of the plaintiffs whereby Narinder Kumar sold 3K 10 M to plaintiffs. This Sale deed is also proved by testimony of PW2 Scribe. The entry was proved as Ex.P7. The parcel of 3K 10M was sold to vendor of plaintiffs by Bikkar Singh and mutation to that effect was reflected in jamabandi 1986-87 Ex.D12. As such, the argument of the appellants to the effect that the sale deeds executed in favour of the plaintiffs were forged and fabricated, is unfounded, baseless and without substance. No evidence has been led by the appellants in this regard.

19. The argument of the appellants in respect of the impugned Sale Deeds Ex.D1 to Ex.D3 dated 4.6.2007 and 6.6.2007 respectively, is also liable to be rejected as, the impugned sale deeds will be necessarily superseded by the sale transactions made in favour of the plaintiffs which were much prior in time to the purchase of land by Defendants no.1 to 3. Therefore, the said sale deeds would be ineffectual against rights of plaintiffs as co-sharers.

20. Moreover, Sale deed Ex.D1 would be valid to extent of 22M only. Vide Sale Deed dated 4.6.2007 Ex.D1 the appellant had purchased 2K



4M from Nachatar, Lakhvir and Makhan; of which Nachattar had sold land to extent of 38M and Lakhvir & Makhan sold land to extent of 6M. However, the said Sale Deed is valid to extent of 16M qua land sold by Nachatar and 6M sold by Lakhbir and Makhan as Nachatar had been left with land to extent of 16M only after execution of Sale Deed dated 12.06.1988 Ex.P4. The sale deed regarding share of Lakhvir and Makhan is valid being within their share. Thus, sale deed dated 04.06.2007 is invalid to the extent it exceeds 16M land owned by Nachatar Singh.

21. Further, on death of Bikkar Singh, his share in land was inherited by defendants No. 7 to 9. Balwinder Singh s/o Zora Singh had already sold land of his share, so sale deed dated 6.6.2007 Ex.D2 executed by Defendants no.7 to 9, is invalid being in excess of share. The appellants had also purchased 04M from Balwinder Singh vide sale deed dated 6.6.2007 Ex.D3. The said sale was also invalid as Balwinder Singh had no share in the land in question. The relevant findings of the learned lower Appellate Court in judgment and decree dated 19.5.2017 are as follows: –

“All the above said sale transactions are prior to purchase of the land by defendants No.1 to 3/appellants from the other defendants-respondents. The defendants have purchased land measuring 02 kanals 04 marlas vide sale deed dated 4.6.2007 from Nachhattar Singh son of Bhag Singh, Lakhvir Singh and Makhan Singh sons of Zora Singh and the copy of the said sale deed is Ex.D1. As per the said sale deed, Nachhattar Singh has sold the land to the extent of 38 marlas and Lakhvir Singh and Makhan Singh have sold the land to the extent of 06 marlas. Therefore, the said sale deed is valid to the extent of 16 marlas qua the land sold by Nachhattar Singh as he had been left with



the land to the extent of 16 marlas after the execution of the sale deed dated 12.6.1988 Ex.P4. The sale deed regarding the share of Lakhvir Singh and Makhan Singh is also valid as said sale deed was within their share. Accordingly, the sale deed dated 4.6.2007 is invalid to the extent, the same exceeds beyond 16 marlas of land from Nachhattar Singh. Further the evidence on the file shows that on the death of Bikkar Singh son of Bhag Singh, his share in the land was inherited by Shinder Kaur, Balbir Kaur and Gurjant Singh i.e. respondents No.7 to 9-defendants. However, Balwinder Singh had already sold the land of his share and therefore, the sale deed dated 6.6.2007 executed by respondents-defendants No.7 to 9 Ex.D2 is invalid being in excess of the share. The defendants have also purchased the land measuring 04 marlas from Balwinder Singh son of Zora Singh vide sale deed dated 6.6.2007 Ex.D3 and the said sale deed is also invalid as Balwinder Singh had no share in the land in question. In these circumstances, this court is of the view that the learned trial court has rightly held that sale deeds Ex. D1 to Ex. D3 are ineffective and invalid to the extent they are in conflict with and against the rights of the plaintiffs as co-owner in the suit land. However, the sale deed Ex. D1 is valid to the extent of 22 marlas i.e.16 marlas sold by Nachhattar Singh and 06 marlas by Lakhvir Singh and Makhan Singh. The findings of the learned trial court stands modified accordingly except for the aforesaid modification, there is no scope for interference in the findings recorded by the learned trial court. Therefore, the instant appeal is hereby partly allowed. Decree sheet be drawn.”

22. I find no error in the above reasoning of the learned lower Appellate Court. The present regular second appeal is hereby **dismissed**.

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

28.04.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

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