

(2012) 08 P&H CK 0215

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3740 of 2012

Gulwant Singh

APPELLANT

Vs

Gurbakshish Singh and others

RESPONDENT

Date of Decision: Aug. 24, 2012

Acts Referred:

- Transfer of Property Act, 1882 - Section 54

Citation: (2012) 168 PLR 412

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: Pawan Kumar, with Mr. Anshuman Mandhar, for the Appellant;

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

Contesting defendant no. 2 Gulwant Singh has filed this second appeal. Respondent no. 1 - plaintiff Gurbakshish Singh filed suit against appellant and respondents no. 2 to 4 and Harnek Singh as defendants. Counsel for the appellant states that Harnek Singh defendant no. 1 has since died. The plaintiff alleged that he is owner in possession of suit land measuring 36 kanals 4 marlas comprising of shares in the lands described in the plaint. The suit land was transferred to him by Harnek Singh defendant no. 1 and by Gurbax Singh since deceased, by way of registered transfer deed dated 1.7.2002 and since then, the plaintiff is owner in possession of the suit land. However, revenue officials in connivance with defendants have passed order dated 8.6.2007 in mutation proceedings thereby not accepting the aforesaid transfer deed, necessitating the filing of the suit.

2. Only defendant no. 2 contested the suit whereas the remaining defendants were proceeded against ex parte. Defendant no. 2 alleged that there was no alleged family settlement as mentioned in the impugned transfer deed dated 1.7.2002 nor Gurbax Singh and Harnek Singh gave the suit land or any part thereof to the

plaintiff. It was also pleaded that family settlement could not take place without participation of defendants no. 2 and 3 who are brothers of Harnek Singh and Gurbax Singh. Alleged transfer deed dated 1.7.2002 is forged and fabricated and is also without consideration and therefore, hit by section 54 of the Transfer of Property Act (in short, the TP Act). Mutation on the basis said transfer deed has been rightly rejected by the revenue authorities vide order dated 8.6.2007. Defendants claimed to have inherited the share of Gurbax Singh since deceased being his natural heirs.

3. Learned Civil Judge (Junior Division), Barnala vide judgment and decree dated 8.2.2012 decreed the plaintiff's suit. In first appeal preferred by defendant no. 2, learned Additional District Judge, Barnala vide judgment and decree dated 16.5.2012 modified the judgment and decree of the trial court relating to 6 kanals 10 marlas land being 1/8th share of 52 kanals 2 marlas land out of the land mentioned in the plaint and dismissed the suit regarding said 6 kanals 10 marlas land, while maintaining the judgment and decree of the trial court regarding the remaining suit land. Feeling dis-satisfied, defendant no. 2 has filed this second appeal.

4. I have heard learned senior counsel for the appellant and perused the case file.

5. Defendants no. 1 to 3 and Gurbax Singh are/were sons of Kirpal Singh whereas defendant nos. 4 and 5 are daughters of Kirpal Singh. Plaintiff is son of defendant no. 3 Shankar Singh. Plaintiff's case is that his uncles Gurbax Singh and Harnek Singh by way of family settlement gave the suit land to him and executed registered transfer deed dated 1.7.2002 in his favour. The plaintiff has proved the said transfer deed by himself appearing in the witness box and also by examining Jagroop Singh PW1, an attesting witness of the transfer deed. On the other hand, contesting defendant no. 2 alleged the said transfer deed to be forged and fabricated document. However, except bald and self serving oral statement of defendant no. 2 himself, there is no other evidence led by him to substantiate his aforesaid version. Thus, execution of the impugned transfer deed by Gurbax Singh and Harnek Singh in favour of the plaintiff has been duly proved. Added to it, the said transfer deed is a registered document which further adds to its authenticity. Defendant no. 2 has miserably failed to prove that the said transfer deed is result of fraud or forgery etc. Such plea of fraud or forgery, even in civil cases, is required to be proved beyond reasonable doubt like a criminal charge. However, in the instant case, there is practically no evidence to prove any fraud or forgery in execution of the impugned transfer deed. Defendant no. 2 himself was not present when the transfer deed was executed and therefore, his testimony carries no probative value to prove the alleged fraud or forgery. On the contrary, the statements of plaintiff and Jagroop Singh attesting witness of the transfer deed are sufficient to prove due execution of the transfer deed and to reasonably rule out the alleged fraud and forgery. Thus, what to talk of proof beyond reasonable doubt, the alleged fraud or forgery is not proved even on preponderance of evidence and in fact there is practically no

evidence to substantiate the said version of the contesting defendant no. 2.

6. Counsel for the appellant contended that the plaintiff did not examine Harnek Singh executant of the transfer deed, as a witness in the case. The contention does not help the appellant. Harnek Singh has not contested the suit and has been proceeded against ex parte in the suit. This circumstance itself depicts that Harnek Singh had executed the impugned transfer deed and he did not challenge or contest the same even when the plaintiff filed the instant suit on its basis five years after its execution. Moreover, defendant no. 2 could also examine Harnek Singh as witness to prove alleged fraud or forgery. If there had been any such fraud or forgery, Harnek Singh would have readily appeared as witness to depose about the same. However, defendant no. 2 has also not examined Harnek Singh as witness. Consequently, the aforesaid contention raised by counsel for the appellant cannot be accepted.

7. Counsel for the appellant also contended that impugned transfer deed is without consideration and is, therefore, hit by section 54 of the TP Act. The contention is misconceived and devoid of substance. Section 54 of the TP Act deals with sale of immovable property. Said provision has no applicability to the instant case which pertains to transfer deed executed by two uncles in favour of their nephew on the basis of family settlement. The question of consideration in terms of cash amount or money, therefore, did not arise and impugned transfer deed cannot be said to be invalid on this ground.

8. Counsel for the appellant next contended that Harnek Singh was not even owner of 6 kanals 10 marlas land, out of the suit land, regarding which also the impugned transfer deed was executed. However, the said transfer deed to this extent has been held to be invalid by the lower appellate court and suit of the plaintiff to the extent of said land has been dismissed. However, merely on its basis, the entire transfer deed cannot be held to be invalid or illegal. If the executants mentioned their own land in the transfer deed and also mentioned some other land of which they were not owners, knowingly or inadvertently, it would not invalidate the transfer deed qua the land of the executants.

9. Counsel for the appellant also contended that photograph of Gurbax Singh on the back of the transfer deed is not visible. However, for this lapse of registration authority, the plaintiff cannot be penalized. If on account of improper focus of the computer camera or for some other reason, the photograph of Gurbax Singh did not appear properly, it does not render the transfer deed invalid. On the contrary, admittedly photographs of Harnek Singh and plaintiff are clearly visible on the transfer deed. For the reasons aforesaid, I find no merit in this second appeal. Finding recorded by the trial court as modified by the lower appellate court is fully justified by the evidence on record. The said finding is not shown to be perverse or illegal or based on misreading or misappreciation of evidence so as to call for interference in exercise of second appellate jurisdiction. No question of law much

less substantial question of law arises for adjudication in this second appeal. The appeal is meritless and is accordingly dismissed in limine.