

(2012) 07 P&H CK 0286

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1009 of 2012 (O and M)

Harpal Singh

APPELLANT

Vs

Jiwan Kumar and Others

RESPONDENT

Date of Decision: July 31, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100, 151

Citation: (2012) 168 PLR 498 : (2013) 3 RCR(Civil) 795

Hon'ble Judges: Jaswant Singh, J

Bench: Single Bench

Advocate: Munish Jolly, for the Appellant;

Final Decision: Dismissed

Judgement

Jaswant Singh, J.

CM No. 8900-C of 2012 has been filed for placing on record application dated 27.07.2007 (Annexure P-2) and seeking exemption from filing its certified copy.

Allowed as prayed for and application dated 27.07.2007 (Annexure P-2) is taken on record subject to all just exceptions.

RSA No. 1009 of 2012

Plaintiff/appellant Harpal Singh is in second appeal against the concurrent findings returned by both the courts below, whereby his suit for declaration with consequential relief of permanent injunction was dismissed by the learned Civil Judge(Jr.Divn.), Phillaur vide judgment and decree dated 26.11.2008 and the findings thereof have been affirmed in appeal by learned Additional District Judge, Jalandhar vide its judgment and decree dated 13.10.2011.

In brief, the facts of the case are that the plaintiff/appellant (Harpal Singh) filed a suit for declaration that the land in dispute is joint Hindu family, coparcenary, ancestral property of plaintiff Harpal Singh and defendant no. 3 Jagtar Singh being

brothers and, therefore, the entry of mutation no. 2692 entered on the basis of registered sale deed dated 12.06.2002 is null and void as the sale deed is without any consideration and against law. It was alleged that Chain Singh defendant no. 1 now deceased and being represented by his children was the father of plaintiff and defendant no. 3 Jagtar Singh. Chain Singh was insane since beginning of year 2000 and he was operated upon in a hospital and thereafter was getting regular treatment from various doctors. It was further alleged that the land in dispute came into the hands of Chain Singh-defendant no. 1 from his forefathers by way of inheritance step by step and Chain Singh was Karta of the family. Consequently, it was alleged that Chain Singh had a limited right to alienate the suit property and the same could be sold only for legal necessity. It was further alleged that the plaintiff/Harpal Singh who is residing abroad when came to know about mutation no. 2692 in February, 2003 when he came back which was recorded on the basis of sale deed in favour of Jiwan Kumar defendant no. 2 executed by defendant no. 1. Thus, it was alleged that this sale deed was a result of misrepresentation and fraud and, therefore, the sale deed be set aside.

2. Upon notice Baljinder Kaur, Lr of Chain Singh filed written statement, admitting the claim of the plaintiff Harpal Singh.

3. Jiwan Kumar, defendant no. 2 filed his written statement and alleged collusion between the family members and denied the suit land to be joint Hindu family ancestral coparcenary property. It was denied that Chain Singh defendant no. 1 was insane or that he was getting treatment from different doctors. He alleged that the sale deed dated 12.06.2002 validly executed for a sale consideration of Rs. 2.50 lac qua land measuring 02 kanals 10 marlas. Remaining averments were denied and prayer was made for dismissal of the suit.

4. Replication was filed wherein the entire contents of the plaint were reiterated and that of the written statements were denied.

5. From the pleadings of the parties issues were framed. Both the sides led their evidence in support of their respective claims and after appreciating their evidence, learned trial Court dismissed the suit vide its judgment and decree dated 26.11.2008 and the findings thereof have been affirmed in appeal by learned lower Appellate Court vide its judgment and decree dated 13.10.2011. Hence the present second appeal.

6. I have heard learned Counsel for the appellant and have gone through the case file carefully with his able assistance.

7. Learned Counsel for the appellant has argued that both the courts below have misread the evidence on record and the findings are based on conjectures and surmises and, therefore, are liable to be set aside. It was further argued that both the courts below have mislead themselves from not raising the presumption of property being a joint and hindu family. Thus prayer was made for acceptance of the

appeal.

8. After hearing learned Counsel for the appellant, this Court is of the considered view that present second appeal is devoid of any merit and same is liable to be dismissed. A perusal of the paper book reveals that the plaintiff/appellant Harpal Singh had placed on record jamabandi from the year 1981-82 till jamabandi for the year 2001-2002 which were exhibited as Ex.P-16 to Ex.P-20. It is not in dispute that no revenue record of the earlier period was produced on the file to establish that the property in dispute came into the hands of Chain Singh-defendant no. 1 from his forefathers upto three degrees so as to establish the ancestral nature of the property. By now it is settled position of law that until and unless it is proved by cogent evidence that a property is having an ancestral character, it is to be presumed that the property is a self acquired one. In the present case, the jamabandies clearly shows Chain Singh original defendant no. 1 to be owner of the property and, therefore, as there is no evidence to prove the nature of property being an ancestral one, this court has no hesitation in holding the property to be self acquired by Chain Singh.

9. As far as the challenge to the sale deed dated 12.06.2002 is concerned, the contention as put forward by the learned Counsel for the appellant that Chain Singh was insane is also devoid of any merit. A perusal of the paper book reveals that although plaintiff had examined Dr. Hari Singh Jaswal as PW-4 to establish this fact, in his cross examination this witness had categorically stated that Chain Singh was a patient of diabetes and had suffered paralysis of half body. He had not issued any certificate regarding the mental condition of Chain Singh as it is only a psychiatrist who can certify regarding the mental condition. Thus, this Court is of the opinion that testimony of Dr. H.S. Jaswal PW-4 is of no help to the case of the appellant/plaintiff. Apart from this, there is nothing on record that has been brought forward so as to prove that Chain Singh defendant no. 1 (now deceased) was mentally incapacitated. On the other hand, the impugned sale deed is a registered document and defendant no. 2-Jiwan Kumar had examined Santosh Kumari (Registration Clerk) as DW-1, Pawan Kumar (Deed Writer) as DW-3, Dharminder Kumar (Naib Tehsildar) as DW-2 and Gurpal as DW-5 so as to prove the due execution of the safe deed in question. It is also not in dispute that no FIR or complaint was preferred by Chain Singh during his lifetime after the execution of the sale deed. As already held above, Chain Singh was neither insane nor he was holding the property in ancestral capacity. Thus, Chain Singh was the competent person to challenge the sale deed on the ground of fraud or misrepresentation if any.

10. In view of the above, when the plaintiff/appellant has miserably failed to prove the nature and character of the property and also the fraud that might have been committed upon Chain Singh-defendant no. 1, this Court is of the opinion that the present appeal is completely devoid of any merit and deserves to be dismissed.

11. Before parting with the judgment, it is relevant to mention that appellant has filed another CM No. 8901-C of 2012 under Rule 5(i) of Chapter 9, Vol.I of the Rules and Orders of the Punjab & Haryana High Court read with Section 151 CPC for directing the Special Kanungo, Jalandhar to prepare excerpt in respect of suit land. As per the application, it is contended that a similar application was also moved before learned trial court, however the said application remained undecided. Hence, it was argued that non decision of the application vitiate the findings of the learned courts below. Further, it was argued that the present application be allowed at this stage as the report of special kanungo will prove that the property in dispute is ancestral in nature.

12. I have heard learned Counsel for the appellant and do not find any merit in the application as well because it is settled position of law that no party can be allowed to fill up lacunae at a belated stage especially when the party to "lis" very well knew the controversy. In the present case, if the application remained undecided, it means that with the dismissal of the suit itself, all the interim applications such as this are also considered to be decided as well. Thus the first contention of the learned Counsel for the appellant is rejected.

13. As far as second argument of permitting the special Kanungo to prepare excerpt is concerned, this Court is of the opinion that the same cannot be allowed as no due diligence has been shown so as to either pursue the application or reasonable explanation has been given as to why the appellant could not procure the record himself by examining the concerned official during trial so as to prove his case. Thus finding no merit in the application, the same is also dismissed. In view of foregoing discussion, finding no question of law much less substantial question of law u/s 100 CPC arising for determination, the present second appeal is hereby dismissed.