

**(2011) 01 P&H CK 0431**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 5147 of 2010 (O and M)

Inirawati

APPELLANT

Vs

Surat Singh and Others

RESPONDENT

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**Date of Decision:** Jan. 6, 2011

**Citation:** (2011) 162 PLR 345

**Hon'ble Judges:** Sabina, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

Sabina,J.

Dal Singh and others had filed a suit for declaration that sale deed dated 14.9.2000 and agreement to sell dated 29.7.1994 and judgment and decree dated 27.10.1999 passed in civil Suit No. 9/3.6.1998 instituted on 14.6.1995 were null and void and not binding on the rights of the Plaintiffs and proforma Defendants. The suit filed by the Plaintiffs was dismissed by the Additional Civil Judge (Sr. Divn.) Safidon vide judgment and decree dated 9.8.2007. In appeal, the said judgment and decree were upheld by the Additional District Judge, Jind vide judgment and decree dated 29.7.2010. Hence, the present appeal by proforma Defendant No. 3.

2. Brief facts of the case, as noticed by the Additional District Judge in para Nos. 3 and 4 of the impugned judgment, are as under:

3. Agricultural land measuring 69 kanals 3 marlas comprised in khewat no 16/11 khata no 19 to 21 situated in the revenue estate of village Rajana, Tehsil Safidon, District Jind as shown in the Jamabandi for the year 1994-1995 was owned and possessed by one Mauthra Great grand father of Plaintiffs no 1 to 3" and Proforma Defendants (hereinafter referred to as the suit land) Plaintiffs No. 3 to 6 are minors who have been sued through their mother Smt. Babli wife of Shamsheer Singh. After the death of Mathura the suit land was inherited by his son Jhandu son of Mathura and after his death the same was inherited by his sons Nihala and Sugan Chand

sons of Jhandu Ram son of Mathura. Nihala father of Plaintiff No. 1 to 3 and Proforma Defendants and grand father of Plaintiffs no 4 to 6 had died on 13.07.2000 and after his death Plaintiff No. 1 to 3, Proforma Defendants and his wife Dakho have got the suit land to the extent of share of Nihala deceased. The aforesaid Nihala and his father Jhandu son of Mathra were Hindu who were governed by Hindu law. The Plaintiffs being coparceners have acquired the right in the suit land by virtue of their birth and in this way the suit land was ancestral coparcenary property of the Plaintiff and deceased Nihala son of Mathra. The Plaintiffs and Proforma Defendants have come to know that the Defendant succeeded in getting an agreement to sell dated 29.7.1994 pertaining the suit land from deceased Nihala son of Muthra father of the Plaintiff no 1 to 3 and Proforma Defendants and grand father of Plaintiffs No. 4 to 6 by way of playing fraud upon him and by way of misrepresentation in collusion with the executants of the said agreement to sell dated 29.7.1994 and witnesses Jai Kishan son of Mamraj and Rai Singh son of Chandgi r/o village Rajana as the said witnesses were nearest of Defendant No. 1. Rai Singh is the real brother of Defendant while Jai Kishan is close friend of Rai Singh brother of the Defendant and thus said Surat Singh in collusion of his brother and other got the agreement to sell and they have not paid even a single penny to deceased Nihala who never executed the agreement to sell. There was no necessity for any money at the time of agreement to sell. Nihala was illiterate and rustic person whose thumb impressions might have been obtained by the said Rai Singh and his associates Jai Kishan alleging him that a witness is required to them. It is alleged that said Jai Kishan and Rai Singh are habitual in preparing the forged documents and thus the said agreement to sell is illegal, null and void which is not binding on the rights of the Plaintiffs. It is further alleged that Defendant No. 1 on the basis of the forged and fabricate agreement to sell dated 29.7.1994 succeeded in obtaining judgment and decree dated 27.10.1999 in civil suit no 9/03.06.1998 instituted on 14.06.1995 titled Surat Singh Nihala Singh from the Court of Civil Judge (Junior Division), Safidon. He also succeeded in procuring some subsequent orders during execution proceedings which are also illegal, null and void and the same are not binding on the rights of the Plaintiffs. It is stated that no opportunity of being heard was given to the deceased Nihala who was also not given any opportunity to file the written statement and lead evidence in the court and, therefore, the impugned judgment and decree dated 27.11.1999 and subsequent orders passed during the execution proceedings are illegal null and void which are not binding on the rights of the Plaintiff and Proforma Defendants. It is further alleged that sale deed no 544 of 14.09.2000 executed by the Reader of the Civil Judge (Junior Division), Safidon in compliance of the judgment and decree dated 27.10.1999 and subsequent orders passed by the court regarding the suit land is also illegal, null and void which is no binding on the rights of the Plaintiffs and Proforma Defendants because deceased Nihala had no right to transfer the suit land as he was neither absolute owner nor he was competent to execute the agreement to sell dated 29.7.1994 in respect of the suit land being joint Hindu family property. Deceased

Nihala was having no legal necessity to alienate the suit land by way of impugned agreement to sell dated 29.7.1994 and subsequent sale deed no 544 of 14.09.2000. The Plaintiffs being coparceners had right, title and interest in the suit land and, therefore, alleged agreement to sell, judgment and decree and sale deed which have been got by Defendant No. 1 in his favour without joining the Plaintiffs and Proforma Defendant are illegal, null and void. Even otherwise, no sale consideration was ever passed on to Nihala and, therefore any transfer through agreement to sell and impugned judgment and decree and sale deed are void abintio. It is also stated that the Plaintiffs and Proforma Defendants and other co-sharers are in possession over the suit land, therefore, without delivery of possession the impugned sale deed is not having any validity in the eyes also which is liable to be declared null and void. The Plaintiffs requested the Defendants to admit their claim over the suit land after getting the impugned agreement to sell, impugned judgment and decree and sale deed cancelled but in vain. Hence this suit.

The suit of the Plaintiff was resisted and contested by the Defendant No. 1 Surat Singh who disputed the version of the Plaintiffs and interalia pleaded that the deceased Nihala and his father were not Hindus who were not governed by Hindu law. The Plaintiffs are not coparceners. The suit land is not coparcenary property. Plaintiffs and Proforma Defendants were having knowledge of the agreement to sell dated 29.7.1994 executed by Nihala and about prior sale deeds executed by Nihala in favour of various vendees. Deceased Nihala after receiving sale consideration executed and thumb marked the said agreement to sell in the presence of the scribe and witnesses. Deceased Nihala as well as Plaintiffs failed to perform their part of the agreement and, therefore, civil court passed the decree for specific Performance of the agreement on 27.10.1999 on the basis of the agreement to sell. Sale deed No. 544 dated 14.09.2000 was validly executed and registered by the court as the Plaintiffs and Proforma Defendants and their mother failed to comply with the order of the court during the execution proceedings. The court had also issued warrant of possession regarding the suit land. judgment and decree and impugned orders passed by the court are perfectly legal and valid and the same are binding upon the rights of the Plaintiffs and Proforma Defendants. Sale deed No. 544 dated 14.09.2000 registered with Sub Registrar, Pillu Kher executed by Nihala and his L Rs through the Reader of the Court is legal and valid. Mutation on the basis of the sale deed No. 544 dated 14.09.2000 deceased Nihala being exclusive owner of the suit land agreed to sell the suit land who validly executed the agreement to sell dated 29.07.1994 after receiving valuable part of the sale consideration. Deceased Nihala agreed to alienate the suit land for his legal necessity. He had received the earnest money from the Defendant and the remaining amount had already been deposited in the Govt. Treasury as per order of the Court. The Plaintiffs can withdraw the said amount from the Govt. Treasury which is part of the sale consideration. Plaintiffs, Proforma Defendant and their mother were served with notice to execute the sale deed after receiving balance sale consideration but they did not appear before the

registering authority and, therefore, the court executed the sale deed in favour of the Defendant. The court had already issued the warrant of possession in respect of the suit land and the possession of the suit land is likely to be delivered to the Defendant by the court. Defendant No. 1 is owner of the suit land and, therefore, he is getting the possession of the suit land in due course of law. Plaintiffs and Performa Defendants have no right, title or interest qua the suit land. The Plaintiffs have not disclosed the facts of the earlier suit no 9 of 1995 intentionally. The Defendant in the written statement has also raised preliminary objections to the effect that the Plaintiffs have no cause of action and locus standi to file the suit which is not maintainable in the present form. For the foregoing reasons, it is stated that the suit of the Plaintiffs merits noting except dismissal with costs.

3. On the pleadings of the parties, following issues were framed by the trial Court:

1. Whether the suit property is joint Hindu family coparcener and ancestral property of the Plaintiffs as alleged in the plaint? OPP
2. Whether the Plaintiffs and his forefathers are Hindu and governed by Hindu law? OPP
3. Whether the agreement to sell dated 29.7.1994 sale deed dated 14.09.2000 are illegal and null and void?OPP
4. Whether the judgment and decree dated 27.11.1999 passed in suit No. 9 of 03.06.1998 are illegal, null and void and not bindings on the rights of the parties? OPP
5. Whether the sale deed No. 544 dated 14.06.1999 is valid and bindings on the rights of the Plaintiffs?OPD
6. Whether the Plaintiffs have got no cause of action to file the present suit?OPD
7. Whether the Plaintiff has no locus standi to file the present suit?OPD
8. Whether the suit of the Plaintiffs is not maintainable in the present form?OPD
9. Whether the suit of the Plaintiff is bad for principle of resjudicata?OPD
10. Whether the Plaintiff is estopped from filing the present suit by his own act and conduct?OPD
11. Relief.

After hearing learned Counsel for the Appellant, I am of the opinion that the present appeal is devoid of any merit and deserves dismissal.

Appellant was proforma Defendant No. 3. She never made an application for being transposed as a Plaintiff in the suit. After the dismissal of the suit, Appellant did not file any appeal challenging the dismissal of the suit. The appeal was filed by the Plaintiffs. Hence the Appellant cannot be said to be an aggrieved person having

right to file the appeal. Even on merits the appeal deserves dismissal.

Plaintiffs had challenged agreement to sell dated 29.7.1994 executed by Nihala in favour of Surat Singh. On the basis of the said agreement to sell, Surat Singh had filed a suit for specific performance and the same was decreed on 27.10.1999. On the basis of the same, sale deed was executed in favour of Surat Singh through Court. No appeal was filed by Nihala against the said judgment and decree. In these circumstances, the Courts below have rightly dismissed the suit of the Plaintiffs. No substantial question of law arises in this regular second appeal, which would warrant interference by this Court.

Accordingly