

(2014) 08 P&H CK 0302

High Court Of Punjab And Haryana At Chandigarh

Case No: R.S.A. No. 46 of 1991

Baljit Singh

APPELLANT

Vs

Joginder Singh

RESPONDENT

Date of Decision: Aug. 6, 2014**Acts Referred:**

- Punjab Tenancy Act, 1887 - Section 6

Hon'ble Judges: Rekha Mittal, J**Bench:** Single Bench**Advocate:** M.L. Sarin, Senior Advocate and Alka Sarin, Advocate for the Appellant; B.R. Mahajan, Senior Advocate and Abhinash Jain, Advocate for the Respondent**Final Decision:** Allowed

Judgement

Rekha Mittal, J.

The present appeal has been directed against the judgment and decree dated 11.12.1990 passed by the Additional District Judge, Gurdaspur accepting the appeal of the respondents and setting aside the judgment and decree dated 20.1.1989 passed by the trial court dismissing the suit of the plaintiffs-respondents.

2. The plaintiffs-respondents filed suit for possession of land measuring 56 kanals 07 marlas situated in the revenue estate of village Wadala Granthian, Sub Tehsil Qadian, District Gurdaspur, detailed in the head note of the plaint. It is averred that the suit land was ancestral coparcenary property in the hands of Harman Singh and the plaintiffs and Harnam Singh constituted a joint Hindu family. Harnam Singh died on 21.1.1985. Baljit Singh defendant-appellant alleged that Harnam Singh had appointed Satwant Kaur, his wife as his attorney and on the strength of said power of attorney, Satwant Kaur sold 17 kanals 11 marlas of land bearing Khasra Nos. 2/2(4-8), 3(5-3) and 7(8-0) of Rectangle No. 38 vide sale deed dated 10.7.1984 and for the remaining land, he (Baljit Singh) executed a lease deed for 30 years. Harnam Singh was incompetent to alienate the suit land without consideration, legal

necessity and benefit of the estate as it was ancestral coparcenary property.

3. Defendant No. 1, Baljit Singh-appellant filed the written statement controverting the allegations that the plaintiffs and Harnam Singh formed joint Hindu family or that the suit land was ancestral coparcenary property. Harnam Singh appointed Satwant Kaur, his wife as general attorney vide registered deed dated 1.6.1984. Through defendant No. 2, he purchased 17 kanals 11 marlas of land vide Registered Sale deed dated 10.7.1984 for a sale consideration of Rs. 36,000/-. The remaining land measuring 38 kanals 16 marlas was obtained by him on lease, vide registered lease deed dated 26.10.1984 at a yearly rent of Rs. 5000/-. Harnam Singh being the absolute owner of the suit land was fully competent to alienate the same. Plaintiffs were governed by customary law and not by the Hindu law.

4. Defendant No. 2 filed her separate written statement admitting that Harnam Singh had appointed her as attorney. Defendant No. 1 asked her to take the suit land on lease for one year. He produced her before the Wasika Nawis (Deed Writer) and got her thumb impression saying that it was a contract of lease for one year, otherwise, she was not explained the nature of the document or its import. The remaining averments of the plaint were admitted.

5. The controversy between the parties led to framing of following issues by the trial court:-

1. Whether the plaintiffs and Harman Singh their father constituted Joint Hindu Family? OPP

2. Whether the suit land is coparcenary/ancestral property of Harman Singh as alleged? OPP

3. Whether the sale deed dated 10.7.1984 was without consideration and legal necessity as alleged? OPP

4. Whether the impugned lease deed was without legal necessity as alleged? OPP

5. Relief.

6. The parties adduced evidence in support of their respective claims. After hearing counsel for the parties and appreciating rival submissions made by their respective counsels, the learned trial court recorded its findings on all the issues against the plaintiffs-respondents and as a result, the suit was ordered to be dismissed leaving the parties to bear their own costs.

7. The matter was carried in appeal by the plaintiffs and the appellate court accepted the appeal with costs and passed a decree of possession in favour of the plaintiffs and against defendant No. 1 of land measuring 17 kanals 11 marlas, subject matter of the sale deed. It was further held that the lease deed Ex. D2 is for a period of one year only at Rs. 5000/-. Possession of the remaining land covered by Ex. D2 may be obtained through the Revenue Court.

8. Feeling dissatisfied by the verdict of the appellate court, the present appeal has been preferred by Baljit Singh, appellant.

9. Counsel for the appellant contends that the appellate court affirmed the findings recorded by the trial court that the suit land is not coparcenary/ancestral property of Harnam Singh, as claimed by the plaintiffs. It was further held that Harnam Singh was an occupancy tenant u/s 6 of the Punjab Tenancy Act, 1887. He became full owner on the enforcement of Punjab Occupancy Tenants (vesting of Proprietary Rights) Act, 1952. The suit land was thus, his self-acquired property and by no stretch of reasoning, could it be held coparcenary ancestral property in his hands qua the plaintiffs. It is argued with vehemence that once the suit land was held to be self-acquired property of Harnam Singh, the suit filed by the plaintiffs-respondents was liable to be dismissed without further deliberation and discussion. The plaintiffs sought to assail alienation/transfer of the suit land by way of sale and lease primarily on the ground that the suit land is coparcenary/ancestral property of Harnam Singh, therefore, Harman Singh was not competent to transfer the land without consideration, legal necessity or benefit to estate. The learned appellate court innovated a totally new story and recorded a finding that the sale deed Ex. D1 was without consideration, result of fraud and misrepresentation committed on Satwant Kaur and as such is void. In addition, it is argued that it was none of the plea of Satwant Kaur in her written statement that she executed the sale deed Ex. D1 without receipt of sale consideration much less the same being the result of fraud or misrepresentation when otherwise, a litigant who alleges fraud or misrepresentation had to plead the facts constituting such fraud and misrepresentation and thereafter to establish his plea by leading cogent and convicting evidence. It is strenuously argued that Satwant Kaur, executant of the sale deed and lease deed did not step into the witness box to corroborate the case of the plaintiffs that the sale deed and lease deed are without consideration. It is further argued that the learned appellate court accepted the plea of Satwant Kaur that the lease deed was executed for a period of one year on fixed lease money of Rs. 5000/- without any admission by the appellant or evidence adduced by the respondents. The last submission made by counsel is that the judgment passed by the appellate court is perverse and liable to be set aside.

10. Counsel for the respondents, on the other hand, contends that perusal of the sale deed Ex. D1 shows that no money was paid to the vendor at the time of execution or registration of the sale deed. The appellant failed to adduce any documentary evidence in regard to payment of Rs. 36,000/- to Satwant Kaur towards sale consideration. It is argued with vehemence that in the absence of any documentary evidence to prove correctness of recital in the sale deed that sale consideration has already been paid, the learned appellate court has rightly held that the sale deed is without consideration.

11. I have heard counsel for the parties and perused the records.

12. The controversy raised in the present appeal gives rise to following substantial question of law for adjudication:-

Whether the judgment and decree passed by the lower appellate court is perverse and liable to be set aside?

13. Indisputably, the trial court and the first appellate court have recorded concurrent findings of fact against the respondents that the suit land is not coparcenary/ancestral property in the hands of Harnam Singh and the same was self-acquired property of said Harman Singh. There is no challenge to the fact that Harman Singh executed a registered power of attorney in favour of none else than his wife Smt. Satwant Kaur. The sale deed in dispute was executed and got registered by Satwant Kaur on 10.7.1984 on the basis of power of attorney dated 1.6.1984. Satwant Kaur filed the written statement admitting the factum of execution of sale deed in favour of the appellant. Satwant Kaur did not deny that the sale deed was for consideration. Harman Singh remained alive till January 1985 and he never challenged the sale deed on the ground of its being without consideration and therefore, void. Satwant Kaur as his attorney did not challenge the sale deed on the said ground. It is surprising rather shocking that despite Satwant Kaur, executant of the sale deed having not denied the receipt of sale consideration of Rs. 36,000/-, the appellate court held that the sale is without consideration. Not only this, the appellate court on its own created a new story that the sale deed is the result of fraud and misrepresentation. It is none of the plea of the respondents or Satwant Kaur that the sale deed was got executed from her either by way of misrepresentation or playing fraud. In this view of the matter, I find force in the contention of the appellant that the judgment of the lower appellate court holding the sale deed Ex. D1 to be without consideration, result of misrepresentation and fraud, is perverse and cannot be allowed to sustain.

14. With regard to the lease deed, the trial court framed Issue No. 4 if the lease deed was without legal necessity as alleged. First of all, the question of the lease deed being executed for legal necessity or otherwise would have arisen only if the land in question being held to be coparcenary/ancestral property. The moment the plea of the respondents in that regard was negatived by the trial court as well as the appellate court, there was no occasion for the appellate court to proceed further to adjudicate the said issue. The appellate court without bothering to look into the pleadings set up in the plaint and Issue No. 4 framed by the trial court, has made its decision in regard to the lease deed being valid only for a period of one year. The finding of the learned appellate court that the lease deed was got executed by misrepresentation and fraud is not only beyond pleadings but also without any evidence to become foundation to hold that the lease deed is the result of fraud and misrepresentation. The lease deed was admittedly executed by Satwant Kaur as an attorney of Harman Singh. The respondents-plaintiffs did not seek to challenge the lease deed on the ground of misrepresentation and fraud. Satwant Kaur in her

written statement raised a plea that her thumb impressions were obtained on a representation that it was contract of lease for one year. She did not appear in the witness box to establish her plea in this regard. Satwant Kaur is none else than mother of the plaintiffs and she has every reason to help the plaintiffs in recovering the possession of land under lease. The learned trial court, in the absence of any pleadings as well as evidence has recorded the aforesaid findings and not only committed a gross error but serious illegality and may be judicial impropriety. The findings of the learned appellate court with regard to the lease deed Ex. D2 are thus, liable to be set aside.

15. In view of what has been discussed hereinabove, the appeal is allowed with costs, the judgment and decree passed by the learned appellate court are set aside and that of the trial court are restored. As a result, the suit for possession filed by the respondents is ordered to be dismissed. Decree sheet be drawn up accordingly.