



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

114

RSA-106-2022 (O&M)

Date of Decision: 20.02.2025

Parkash Singh

....Appellant

Versus

Rattan Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. FS Dhillon, Advocate for the appellant.

NIDHI GUPTA, J.

1. The plaintiff is in second appeal against the concurrent judgments and decrees of both the Courts below whereby the suit of the plaintiff for declaration to the effect that plaintiff is the owner in possession of the suit land as described in the plaint; and that the sale deed dated 20.11.2006 as propounded by defendant/respondent herein, is null and void; and a decree of permanent injunction restraining the defendant from interfering in the joint possession of the plaintiff or alienating by way of sale etc., has been dismissed.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is being referred to as 'the plaintiff', whereas the respondent as 'the defendant'.

3. Brief facts of the case as set out in the plaint are that the present suit for declaration and possession has been filed by the plaintiff on the averments that the plaintiff is of unsound mind and he cannot prosecute the suit himself. Therefore he is suing through his brother Ranjit Singh as his next friend. The suit land detailed and described in the



schedule of the head note is owned and possessed by the plaintiff. The defendant alleged that he has got some sale deed dated 20.11.06 executed from the plaintiff in his favour, which is false and wrong. Neither plaintiff executed any such sale deed nor he was competent to do so. He is a lunatic and a person of unsound mind and is not capable of entering into any sale deed. Further the said sale deed is ineffective, inoperative and against the rights of the plaintiff. The mutation sanctioned on the basis of the above mentioned alleged sale deed in favour of defendant is also illegal, null and void and same is result of collusion and conspiracy of the defendant with the revenue officials. The defendant has threatened to interfere in the joint possession of the plaintiff or alienate by way of sale etc. any part or portion of the suit land illegally and forcibly, which has cast a cloud over the title of the plaintiff. The plaintiff has requested to defendants to admit the claim of the plaintiff but they have refused to do so. Hence, the present suit.

4. Upon notice, the defendant appeared and resisted the suit by filing the written statement, *inter alia*, raising the objections that unsound mind of the plaintiff is not proven on record; plaintiff was owner in possession of the suit land; the said suit land was sold by the plaintiff to the defendant vide registered sale deed dated 20.11.2006 for a total sale consideration of ₹5,08,000/-; and possession of the suit land was also delivered to the defendant; and since then defendant is in possession of the suit land. Further, it was averred that the plaintiff had executed the sale deed in favour of the defendant with his free disposing state of mind.



5. Replication was filed by the plaintiff reiterating the averments in the plaint, while denying the statements made in the written statement.

6. On the basis of the pleadings of the parties, following issues were framed by the learned trial Court: -

“(i). Whether the plaintiff is in possession of the suit property? OPP

(ii). Whether plaintiff is entitled for the relief of declaration as prayed for? OPP

(iii). Whether the sale deed dated 20.11.2006 is null and void? OPP

(iv). Whether plaintiff is entitled to relief of permanent injunction as prayed for? OPP

(v). Whether in alternative maintainable value of possession? OPP

(vi). Whether suit of the plaintiff is maintainable? OPP

(vii). Whether plaintiff has locus standi to file the present suit? OPP

(viii). Whether the suit of the plaintiff is proper valued for the purpose of Court fee and jurisdiction? OPD.

(ix). Relief.”

7. Thereafter, on the basis of oral and documentary evidence adduced by the parties, the learned trial Court decided issue Nos.1 to 7 against the plaintiff and in favour of the defendant; whereas issue No. 8 was decided against the plaintiff being not pressed; and dismissed the suit of the plaintiff with costs vide judgment and decree dated 17.12.2024.

8. The plaintiff had approached the 1st Appellate Court by way of filing Civil Appeal No. 14/28.01.2015, against the judgment and



decree dated 17.12.2014, which *too* was dismissed by the learned Additional District Judge, Gurdaspur, vide judgment and decree dated 05.02.2020. Hence, the present second appeal.

9. Learned counsel for the appellant-plaintiff assails the judgments of both the Courts below by *inter alia*, submitting that the learned Courts below have failed to appreciate that the plaintiff is of unsound mind. He is a mentally retarded person since birth who is not able to discharge his day-to-day functions. The said fact has been proven on record by the plaintiff by examining PW-2 Gurpartap Singh, who had given report Ex. P-3 as per which the I.Q. of the plaintiff was found to be 48 and his mental age was 7 years and 3 months. PW-4 Dr. Varinder Mohan, who had issued disability certificate bearing No. 412/2012 dated 13.09.2012 Ex. P-4 to the plaintiff had deposed that the plaintiff was having moderate level retardation with 70% disability which was substantiated by documents Ex. P-5 to Ex. P-9 to prove that the plaintiff is mentally retarded person; and is therefore, not able to execute the impugned sale deed dated 20.11.2006. It is contended that in passing the impugned judgments the Courts below have failed to take into account the said medical record of the plaintiff which amply demonstrates that the plaintiff was insane. It is submitted that therefore, the impugned judgments of both the Courts below are based on surmises and conjectures and deserve to be set aside.

10. No other argument is raised on behalf of the appellant.

11. I have heard ld. counsel for the appellant and perused the case file in great detail.



12. Learned counsel for the plaintiff impugns the sale deed dated 20.11.2006 executed by the plaintiff in favour of the defendant/respondent herein, on the ground that the plaintiff was not competent to execute the sale deed as, he is of unsound mind. The evidence led by the plaintiff in support of the said contention has been noticed here-in-above in the arguments made by learned counsel for the appellant. However, a detailed perusal of the record shows that the said assertions of the appellant are flawed. The plaintiff has relied upon the testimony of PW-2 Dr. Gurpartap Singh. However, the said evidence is unreliable as PW-2 has admitted in his cross-examination that IQ report of the plaintiff Ex.P-3 is not stamped or issued on the letter pad of the concerned authority of hospital. It is also admitted by PW-2 that the said IQ report Ex.P-3 was prepared as per information supplied by the relatives of the plaintiff. PW-2 Dr. Gurpartap Singh and PW-4 Dr. Varinder Mohan, had not conducted any test of the plaintiff. As such, the said IQ report is not based on an independent assessment or examination of the plaintiff by PW2; but as admitted, is based on the information provided by the relatives of the plaintiff. Therefore, the said report has no value.

13. What further casts shadow of doubt upon the report Ex. P-3 is that the said IQ report is dated 13.09.2012; whereas the sale deed is dated 20.11.2006. Thus, there is nothing whatsoever on record to indicate that on the date of issuance of sale deed i.e. on 20.11.2006, the plaintiff was of unsound mind. Furthermore, the said IQ report Ex. P-3 and disability certificate Ex. P-4 have been procured by the plaintiff after



filing of the present suit on 06.08.2009. Admittedly, the plaintiff was examined on 23.08.2012 i.e. 03 years after filing of the present suit; and report was prepared on 13.9.2012; whereas present suit was filed on 6.8.2009. From this fact, also it would appear that the plaintiff has attempted to collect evidence.

14. Furthermore, as already noticed above, even the writing in the IQ report to the effect that plaintiff was of unsound mind since birth, was admittedly, at the instance of relatives of the plaintiff. Yet, father of the plaintiff did not step into the witness-box to prove the mental condition of the plaintiff, even though, he would be the best witness in this regard. It is also relevant that as per the record, the plaintiff is stated to have been examined and declared of unsound mind by birth by Psychologist Ms. Nitasha Panday. The IQ report Ex. P-3 as well as the disability certificate Ex. P-4 were prepared on the basis of IQ examination done by Ms. Nitasha Panday, Psychologist who had conducted clinical examination of the plaintiff. However, despite being most material witness, she has not been examined to depose regarding the mental condition of the plaintiff. From the above facts, it is clear that the alleged retardation of the plaintiff is not established.

15. As regards, the sale deed dated 20.11.2006 Ex. D-1, the same stood proved on record by examining the attesting witness Jagir Singh DW-2 and Scribe DW-3 Nirmal Kumar. Moreover, the said sale deed is a registered document, therefore, presumption of truth is attached to the same. Even mutation has been sanction on the basis of sale deed registered in 2006. Even no appeal was filed against the



mutation sanctioned on the basis of impugned sale deed. Even the cancellation of the sale deed has not been sought. Even as per the photograph of the plaintiff affixed on the sale deed Ex. D-1, it can be seen that the plaintiff is standing like a normal person in his senses. Even the attesting witnesses DW-2 Jagir Singh and Scribe DW-3 Nirmal Kumar, have consistently deposed that the plaintiff was in his senses at the time of execution of the sale deed dated 20.11.2006. The plaintiff had affixed his thumb impression on the sale deed after admitting the contents of the same to be correct. There is a specific endorsement on the sale deed to the effect that the contents of the sale deed were read over to the plaintiff which were admitted to be correct by the plaintiff. It is reiterated that the sale deed is dated 20.11.2006; the suit was filed by the plaintiff on 06.08.2009; whereas the disability certificate Ex. P-4 has been issued on 13.09.2012 i.e. 06 years after the execution of the sale deed. Thus, there is nothing whatsoever on record to remotely suggest that plaintiff was of unsound mind in the year 2006 at the time of execution of sale deed; and the sale deed has been duly proven in accordance with law.

16. It may also be pointed out that the present suit has been filed by the next friend of the plaintiff namely, Ranjit Singh, who is also the real brother of the plaintiff and who had deposed on behalf of the plaintiff. It has come on record that there was no cordial relation between the aforesaid Ranjit Singh and the defendant.



17. Learned counsel for the appellant is unable to dispute or controvert the above said facts/evidence/findings or give any satisfactory explanation for the same.

18. In view of the above, present appeal is **dismissed**.

19. Pending application(s) if any also stand(s) disposed of.

20.02.2025

rishu

(NIDHI GUPTA)

JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No