

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****111****RSA-2892-2018 (O&M)****Date of decision: 10.02.2025****Ram Singh****...Appellant(s)****Vs.****Umed Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Sandeep Lather, Advocate for the appellant.

*********NIDHI GUPTA, J.**

The present second appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned Courts below, whereby the suit for declaration filed by the appellant/plaintiff has been dismissed by the learned trial Court vide judgment and decree dated 22.01.2015; and the appeal filed by the plaintiff against the said judgment and decree dated 22.01.2015 has been dismissed by the learned first Appellate Court vide judgment and decree dated 06.12.2017 with costs.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff'; and the respondents are the 'defendants'.

3. The brief facts of the case are that the plaintiff filed the present suit seeking declaration to the effect that the plaintiff is owner in possession of the suit land as described in the plaint and is entitled to get



the same mutated in his name in the revenue record. A further declaration was sought that the defendants No. 1 to 3 had no right to the suit land in light of undertaking/declaration dated 14.12.1999. Further prayer was made for grant of injunction restraining the defendants from interfering into peaceful cultivating possession of the plaintiff over the suit land.

4. The above said suit was filed by the plaintiff on 21.11.2011. In the plaint, it was pleaded that as per jamabandi for the year 1994-95, plaintiff, Lal Singh (father of defendants No.1 to 3), defendants No.4 to 6, Smt. Meli Devi (mother of defendant No.7) and Smt. Bhateri Devi (mother of plaintiff) were joint owners in possession of land measuring 11 Kanals 6 Marlas, comprised in Khewat No.72 Khata No.183. Plaintiff, Lal Singh, defendants No.4 to 6 and Meli Devi appointed defendant No.4 as their power of attorney vide deed No.122, dated 23.3.1992. Lal Singh was in need of money and he asked plaintiff, defendants No.4 to 6, Smt. Bhateri Devi and Smt. Meli Devi that he wants to sell his share of 7 Kanals out of joint land but vendee wants to purchase specific killa number. He requested plaintiff and other co-sharers to give their consent for the sale of specific Khasra number. He agreed that he will relinquish all his rights into the remaining joint land in favour of plaintiff and other co-sharers. Upon this request of Lal Singh, a family settlement was arrived at in which plaintiff and other co-sharers sold 7 Kanals land in the shape of specific Khasra number, in favour of Rohtash, Karambir and Kabul Singh, vide sale deed No.1257 dated 14.12.1999, registered in the office of Sub Registrar. Lal Singh, in the light of above-mentioned family settlement, executed an



undertaking dated 14.12.1999, in favour of plaintiff, defendants No.4 to 6, Smt. Bhateri Devi and Smt. Meli Devi that he had received the whole sale consideration of sale of land through above-mentioned sale deed and he undertook that in the remaining joint land, he shall not claim any share. He also undertook that revenue record shall be corrected in favour of other co-sharers accordingly. This undertaking was duly written and was signed by Ram Singh (Nambardar), as attesting witness. It was attested from Notary Public Shri Vikram Singh Malik, Advocate. In this way, Lal Singh (father of defendants No.1 to 3) was left with no right and title into the remaining joint land. Smt. Bhateri Devi died in the year 1996. Smt. Meli Devi also died. Lal Singh died on 2.8.2008 leaving behind defendants No.1 to 3 as his legal heirs. In the life time of Bhateri Devi, in October 2005, another family settlement took place according to which defendants No.4 to 6 and Meli Devi agreed that plaintiff shall be exclusive owner in possession of the suit land and plaintiff shall have every right to correct the revenue record of this land in his favour. It is pleaded that therefore, plaintiff is owner in possession of this land since the time of family settlement of the year 1999 but now, defendants are planning to take undue benefit of wrong revenue record and are adamant to interfere into the possession of plaintiff over the suit land. Defendants are also threatening to alienate the suit land. Plaintiff made several requests to defendants for admitting his claim over the suit land but the same went unheard. Thus, present suit for declaration and permanent injunction was filed.



5. Upon notice, defendants No.1 to 3/respondents No.1 to 3 herein appeared and filed joint written statement resisting the suit on various grounds inter alia submitting that they had inherited the share of Lal Singh after his death and they were co-sharers in joint possession of the suit land. It was further denied that Lal Singh had never appointed defendant No.4 as his attorney. It was further submitted that the land was sold by Lal Singh, plaintiff, defendants No.4 to 6, equally from their share in the year 1999 and sale consideration was also equally distributed among all the co-sharers. The defendants denied any execution of alleged undertaking dated 14.12.1999 (Mark-1) claiming the same to be a result of fraud and forgery. It was submitted that Lal Singh used to append his signatures and thus, there was no occasion for Lal Singh to put his thumb impression over the alleged undertaking dated 14.12.1999. The defendants also denied the alleged family settlement entered in the year 2005 between the plaintiff and defendants No.4 to 6; and further claimed themselves to be joint owners in possession of the suit land.

6. Defendants No.4 to 6 filed separate written statement praying for allowing the claim of plaintiff. Defendant No.7 was proceeded against ex parte, vide order dated 23.2.2012 as he failed to put in appearance despite issuing of notices. No replication was filed.

7. From the pleadings of the parties, following issues were framed:-

1) Whether the plaintiff is entitled for declaration that he is owner in possession of the suit property measuring 4 Kanals and 6 Marlas, in addition to his own share?OPP



2) Whether defendants No.1 to 3 have no right, title and interest over the suit property on the basis of declaration dated 14.12.1999?OPP

3) Whether plaintiff is entitled for permanent injunction, as prayed for?OPP

4) Whether the suit of the plaintiff is not maintainable in the present form?OPD

5) Whether plaintiff has no cause of action and locus standi to file the present suit?OPD

6) Whether plaintiff is estopped by his own act and conduct? OPD

7) Relief.

8. Upon consideration of the pleadings, as also the evidence adduced by the parties, the learned trial court decided the issues No.1 to 3 against the plaintiff and in favour of the defendants; issues No. 4 to 6 against the defendants being unproved; and accordingly dismissed the suit of the plaintiff vide judgment and decree dated 22.01.2015. The plaintiff's appeal against the said judgment and decree was dismissed by the learned District Judge, Jind vide judgment and decree dated 06.12.2017, thereby affirming the judgment and decree of the learned trial court. Hence, the present second appeal.

9. Learned counsel for the plaintiff assails the impugned judgments and decrees by submitting that both the courts below have failed to properly consider the execution of sale deed dated 14.12.1999 (Mark-1) by Lal Singh; and similarly execution of his affidavit dated 14.12.1999 Ex.PW4/A on the same time and date. It is submitted that from the same documents family settlement has been fully proven on the case



file from the oral and documentary evidence, as well as sale deed Mark-1 and affidavit.

10. It is further submitted that Lal Singh wanted to sell specific killa numbers of his share from joint khewat. Resultantly, family settlement took place and sale deed (Mark-1) was executed by all co-sharers on behalf of Lal Singh. Even total sale consideration was received by him. Further Lal Singh in order to protect the rights of the other co-sharers gave his affidavit on 14.12.1999 itself, wherein he gave undertaking that he will transfer all his share in the name of the remaining co-sharers in lieu of the land sold by him on their behalf as mentioned in sale deed dated 14.12.1999; and that the land sold vide sale deed Mark-1 shall be deemed to be sale of his share only as he has received the whole sale consideration. It is contended that the said facts have not been considered by both the courts below.

11. It is further submitted that even the fact that defendant No.1/Umed Singh son of Lal Singh as PW2 has admitted that "*some land has been sold by my father and again admit that his share has been sold by my father*" has not been considered. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees be set aside.

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

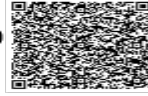
13. Heard learned counsel for the appellant and perused the case file in great detail.

14. I find no merit in the submissions made on behalf of the plaintiff. It is admitted by the plaintiff that there was no agreement to sell in



his favour. Thus, the plaintiff is basing his entire claim on the affidavit Ex.PW4/A allegedly executed by Lal Singh.

15. Succinctly put the case of the plaintiff is that the suit land was sold by way of sale deed No. 728 dated 14.12.1999, a photostat copy of which has been brought on record as Mark-1. As per the said sale deed, all the co-sharers were selling their land to the vendees. However, as the whole sale consideration in respect of the said sale was received by Lal Singh, father of defendants No.1 to 3, an undertaking was given by Lal Singh by way of Affidavit dated 14.12.1999/Ex.PW4/A in the name of the remaining co-sharers that the land sold vide sale deed Mark-1 shall be deemed to be sale of his share only and he shall not claim any right into the remaining joint land. It is further the case of the plaintiff that thereafter, another family settlement was arrived at in the year 2005 as per which, all other co-sharers except Lal Singh admitted that plaintiff is owner in possession of remaining suit land and he has every right to get the revenue record corrected in his favour. However, upon the death of Lal Singh, his mutation of inheritance was entered into the name of defendants no.1 to 3, on the basis of which they were claiming themselves to be co-sharers in the suit land; though they had no right to the same as plaintiff was exclusive owner in possession of the land on the basis of Affidavit of Lal Singh and the family settlement. The said undertaking/affidavit and the family settlement were denied by the defendants; and it was further claimed that by way of sale deed dated 14.12.1999 Mark-1 , all co-sharers had sold part of their respective share, and therefore, the revenue entries were correct.



16. A perusal of the above facts shows that the plaintiff is basing his claim on the Affidavit of relinquishment dated 14.12.1999, and the alleged family settlements. Needless to say, the said Affidavit cannot confer any title upon the plaintiff. Moreover, admittedly, said Affidavit was never incorporated in the revenue record. In this regard, the case of the contesting defendants is that the said undertaking was got prepared by the plaintiff by playing fraud upon Lal Singh. Admittedly, the plaintiff was unable to prove the said affidavit in accordance with law; and did not even produce any attesting witness of the said alleged affidavit. To the contrary, the defendants had examined Document Writer Ajit Singh PW-4, who deposed that he had scribed both the sale deed Mark-1, and also the impugned affidavit Ex.PW4/A. However, he had only made entry of sale deed Mark-1 in his register and had not made any such entry regarding the impugned affidavit in his register. As such, the execution of affidavit assigning share of Lal Singh in favour of the plaintiff was doubted. Learned courts below also found that although the sale deed Mark-1 appeared to have been registered by the parties however, it was not explained as to why the said affidavit was also not got registered as admittedly, the same was also written on the same date i.e. 14.12.1999 and at the same time. Even the stamp vendor from whom the stamp paper for the affidavit was purchased, was not examined by the plaintiff.

17. Further, there is nothing whatsoever on record to indicate that any type of family settlement, oral or written, was arrived at between the



parties in the years 1999 and/or 2005. There is nothing to show that any such settlement was ever acted upon, and if so, on which date.

18. In view of the above facts, the learned trial court gave the findings as recorded in para 18 of the impugned judgment dated 22.01.2015, which read as under:-

“..... that land sold in the year 1999 by way of registered sale deed which is placed on file as Mark-1 was jointly sold by all the co-sharers which included plaintiff, Lal Singh (predecessor in interest of defendants No. 1 to 3), defendants No. 4, 5, 6 and mother of defendant No. 7. As land was sold jointly therefore, it shall be deducted from the share of all the co-sharers and defendants No.1 to 3 cannot be deprived from their share in suit land on the basis of impugned affidavit dated 14/12/1999. Even possession of plaintiff is also joint over the suit land along with other co-sharers and there is no evidence on file from which the exclusive possession of plaintiff over the suit land can be ascertained therefore, plaintiff is not entitled to relief of injunction as prayed for in plaint.”

19. Learned counsel for the appellant is unable to dispute or controvert the above said findings.

20. Thus, the present regular second appeal is hereby **dismissed**.

21. Pending applications, if any, stand disposed of.

10.02.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No