



IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

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RSA-5101-2019 (O&M)  
Date of decision: 23.01.2025

Chanan Ram

...Appellant

VERSUS

Raghvir Singh and others

...Respondents

**CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

Present :- Mr. Ram Kumar Chauhan, Advocate for the appellant.

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**VINOD S. BHARDWAJ, J. (Oral)**

1. The plaintiff in second appeal is against the concurrent dismissal of Civil Suit as well as the subsequent Civil Appeal by the Civil Judge (Sr. Divn) Hoshiarpur in Civil Suit No.227 dated 29.04.2008/03.06.2009 vide judgment and decree dated 11.09.2014 as well as in Civil Appeal No.82 of 2014/2015 vide judgment and decree dated 09.02.2016 respectively.

2. The appellant has also moved an application bearing No. **CM-14469-C-2019** for seeking condonation of delay of 1044 days in re-filing of the appeal. For the reasons stated thereunder, **the application is allowed** and the delay of 1044 days in re-filing the appeal is condoned.

3. Briefly summarized, the facts of the present case are that the appellant-plaintiff has preferred a Civil Suit for declaration to the effect that the mutation entries No.2608, 2614 and 2610 on the basis of *Tabdeel Malkiatnama* in favour of the defendants No.1 and 2 was illegal, null & void and was a result of fraud and fabrication and the same thus does not convey any title on defendants-respondents and had prayed for cancellation of the same. Further relief for permanent injunction to restrain the defendants-



respondents from alienating/encumbering the property was also made claiming that appellant-plaintiff is the actual owner of the property.

4. Learned counsel appearing on behalf of the appellant contends that the appellant-plaintiffs are son and daughters of Khushi Ram s/o Faqir Chand who died on 12.04.2008, while defendant No.1 is grandson and defendant No.2 is the daughter-in-law of Khushi Ram being wife of Swarna Ram son of Khushi Ram. Plaintiff Nos. 2 to 4 are married daughters of Khushi Ram and they are well settled in their families.

5. He contends that the appellant-plaintiff/Chanan Ram is working as a daily wager and he along with his family were living together with his father-Khushi Ram. One Swarna Ram and his family were also staying together with them. But after the death of Swarna, his family and plaintiff Chanan Ram have been living separately. All the plaintiffs had good relations with their father-Khushi Ram and plaintiffs No. 2 to 4 also used to visit their home to look after him. After the death of Khushi Ram, when the appellant-plaintiffs approached the Revenue Officer for *Fard Jamabandi*, they were astonished to see that mutation entries have been changed to the names of the defendants-respondents on the basis of *Tabdeel Malkiatnama* and to be apprised that Khushi Ram had also taken a loan against this property from the Bank. Appellant alleged that the aforesaid *Tabdeel Malkiatnama* entries have been fraudulently changed and the names of the defendants-respondents has been fraudulently incorporated since Khushi Ram was very old, had low vision and was also uneducated and further there was no need for him to obtain any loan. The aforesaid Civil Suit had thus been filed claiming that the *Tabdeel Malkiatnama* had been scribed



fraudulently by exploiting the illiteracy of Khushi Ram so as to deprive the natural heirs of their shares and that the mutation entries sanctioned on the basis of the *Tabdeel Malkiatnama* are liable to be set aside.

6. Upon being put to notice, the defendants-respondents entered appearance and raised various objections with respect to the maintainability of the Civil Suit and claimed that the appellant-plaintiffs were not in possession of the property and as such the prayer for injunction would not be maintainable. On merit, the relationship between the parties was not denied. It was claimed that Khushi Ram died on 13.04.2008 instead of 12.04.2008 and contrary to the claim by the appellant-plaintiffs, there was a strained relationship between appellant-plaintiff/Chanan Ram and his father Khushi Ram due to which plaintiff-Chanan Ram had already left the house about 25 years back. Hence, Khushi Ram was living with Swarna, father of respondent-defendant No.1 and after death of Swarna, he lived with the defendants-respondents. The existence of any cordial relationship of the appellant-plaintiff with his father Khushi Ram was specifically denied. It was further averred that the mutation entries had been sanctioned by the Revenue Officials on the basis of transfer of ownership (*Tabdeel Malkiatnama*) dated 18.08.2006 and 01.12.2006 in favour of Raghbir Singh and transfer of ownership deed dated 28.09.2006 in favour of defendant-respondent/Pushpa Devi, all of which had been executed by Khushi Ram himself in his sound disposing mind and out of his own free will and on account of natural love and affection and acknowledgement of the care and affection rendered by them to Khushi Ram. It was also claimed that Khushi Ram was the sole and absolute owner in possession of the suit property and



was capable and competent to transfer the same as per his own will and that he was in a fit state of mind, had an healthy eyesight and was capable of understanding the implication of execution of transfer of ownership deeds. The said transfer deed has been given full effect and since then the defendants are in possession of the suit property as sole and exclusive owners thereof.

7. Replication to the response was not filed whereafter following issued were framed.

- “1. *Whether plaintiffs are entitled to declaration as prayed for? OPP*
2. *Whether the suit is not maintainable? OPD*
3. *Whether the suit is not properly valued? OPD*
4. *Relief.”*

8. Parties led their evidence and placed the documents on record and upon consideration thereof, the Civil Judge (Sr. Divn), Hoshiarpur recorded a finding that undisputedly plaintiff-appellant/Chanan Ram was not staying in the village and that the property in question had been purchased by Khushi Ram with his own funds. The same was thus not an ancestral property. It was also noticed that appellant-plaintiff/Chanan Ram had specifically admitted that Khushi Ram-his father was living with family of Swarna at the time of his death. PW-2 has also deposed that he was not the summoned witness, and he claimed his separate right on the said property on the ground that Khushi Ram had executed an agreement to sell the land to him and that a separate suit for specific performance had been filed by him as well. He also admitted that appellant-plaintiff/Chanan Ram was a witness



of the said agreement and that there was no evidence to establish that the executant/Khushi Ram was not in a disposing state of mind or could not understand the implications of his action.

9. It was also noticed by the Civil Judge (Sr. Divn.) Hoshiarpur that there were no suspicious circumstances in execution of the *Tabdeel Malkiatnama* and no evidence had been led to dispel the sanctity and validity of the said document. Being a self acquired property, Khushi Ram could deal with the property in any manner whatsoever and taking into consideration his status and relationship with the respondents-defendants, the said transfer/ *Tabdeel Malkiatnama* was held to have not been perpetuated by any undue influence or to be executed without any free will or under any undue pressure or coercion.

10. In view of the aforesaid finding, the suit filed by the appellant-plaintiffs was dismissed with cost.

11. Aggrieved thereof, the appellant preferred an appeal before the District Judge, Hoshiarpur which was registered as Civil Appeal No.82 of 2014/2015. The said Civil Appeal was also dismissed by the Additional District Judge, Hoshiarpur vide judgment and decree dated 09.02.2016. The operative part of the said judgment reads thus:

*“14. After hearing the learned counsel for the parties and going through the record, pleadings of the parties, evidence on record, this court has found that it is not disputed about the fact of relationship between the parties between them and with the deceased Khushi Ram i.e. Khushi Ram was father of plaintiffs/appellants and grandfather of defendant no. 1 and*



*father-in-law of defendant no. 2 and defendant no.2 is mother of defendant no. 1 and the age of Khushi Ram at the time of death was 90 years. The only dispute between the parties is that three Tabdeel Malkiatnamas as mentioned in the head note of the plaint whether valid or not and the resolve this controversy and to arrive at a conclusion that the said Tabdeel Malkiatnamas are valid or not, cross-examination of appellant-plaintiff Chanan Ram PW1 Girdhari Lal PW2 and Charno PW3 and evidence of DWs is very relevant and during cross-examination PW1 Chanan Ram clearly admitted that he is rickshawpullar and Khushi Ram was having daughters and he died on four sons and three 12.04.2008 at village Harmoya and he clearly admitted that the suit property was purchased by Khushi Ram during the period from 1968 to 1985 and admitted as correct that the suit property was purchased by Khushi Ram himself and the same is not ancestral property and this fact of purchasing the suit property by Khushi Ram has also been admitted by PW3 Charno during her cross-examination. Hence it is clearly proved on record even by admission of the appellant-plaintiff Chanan Singh that the property in dispute is self acquired property of Khushi Ram and the same is not ancestral property.*

15. *This court has further found that the appellant-plaintiff PW1 Chanan Singh during cross- examination also admitted that Khushi Ram was living with the family of Swarna*



*Ram at the time of his death and this fact of living of Khushi Ram with the family of defendants has also been admitted by PW3 Charno. Meaning thereby respondents-defendants who are respectively son and wife of deceased Swarna Ram were looking after the deceased Khushi Ram after the death of Swarna Ram and before the death of Khushi Ram. The appellant-plaintiff PW1 Chanan Singh further admitted that Khushi Ram died due to his illness but no proof or evidence about the illness of Khushi Ram at the time of death and earlier to that period has been brought on record by the appellant-plaintiff before the trial Court rather on the other hand PW3 Charno during cross- examination clearly admitted that before the death of Khushi Ram he was no ill and he died suddenly and further admitted that before his death Khushi Ram was in sound disposing mind and in the absence of no proof and evidence of illness of deceased Khushi Ram and in the presence of admission of PW3 Charno about sudden death of Khushi Ram without any illness clearly goes to show and established fact to prove that deceased Khushi Ram was not ill and having sound disposing mind till the date of his death and was living with the defendants at the time of his death and earlier to that period also.*

16. *This Court has further found that during cross-examination PW1 Chanan Ram admitted that Khushi Ram was cultivating his land himself. On the other hand PW3 Charno*



*during cross-examination admitted that after the execution of sale deed Raghbir Singh respondent-defendant no. 1 cultivating the suit property in dispute and in this manner the possession of the suit property as admitted by PW3 Charno witness of the plaintiff has established with the respondents-defendants and further jamabandi on record for the year 2004- 05 clearly shows that Khushi Ram father of plaintiffs and grandfather of defendant no. 1 and father-in-law of defendant no. 2 was shown to be owner in possession of the property in dispute and thereafter transfer of ownership deeds (Tabdeel Malkiatnamas) Ex.D1 to Ex.D3 clearly shows that the properties were handed over to the defendants by Khushi Ram by virtue of various transfer of ownership deeds and possession of the land was also delivered to the respondents-defendants as per the terms of transfer deeds and the said deeds have been duly proved respondents-defendants and on record by the one of the marginal witness Sadhu Ram Lambardar DW2 and identified his signatures on all the deeds and nothing during cross-examination of this witness came on record by which it may be shown and appellants-plaintiffs that the proved by the said Tabdeel Malkiatnamas were result of fraud as alleged by him rather the said Tabdeel Malkiatnamas have been duly proved on record by the respondents- defendants and proved the fact that the said Tabdeel Malkiatnamas were validly and legally executed by Khushi Ram in favour of respondents- defendants*



*and the same documents are registered documents and as per law presumption genuineness being authentic document to of the registered document is attached and no evidence in rebuttal has been brought appellants-plaintiffs to on the record by the said Tabdeel Malkiatnamas. Moreover PW3 Charno admitted that deceased Khushi Ram at the time of his death was in his sound disposing mind and he had purchased the suit property and after the execution of the sale deed Raghbir Singh cultivated the suit property. Hence as per the evidence on record it has been clearly proved on record that the said three Tabdeel Malkiatnamas are validly executed by Khushi Ram who was owner of the property in dispute while he was in sound disposing mind legally in favour of the respondents-defendants and appellants-plaintiffs remained failed to prove the manner of fraud, misrepresentation as alleged by them in their pleadings and evidence and in the absence of the same appellants-plaintiffs remained failed to prove their case by standing on their own legs and arguments of learned counsel for the appellants-plaintiffs about the Will is without any force and substance because there is no pleadings of the appellants-plaintiffs qua the Will as alleged by him and in the absence of the pleadings the evidence, if any, cannot be read or considered in favour of the appellants-plaintiffs and in this manner as the Tabdeel Malkiatnamas were validly and legally executed by deceased Khushi Ram in favour of the defendants and mutation*



*has been rightly entered as mentioned in the head note of the plaint in favour of the defendant no. 1, 2.*

17. *This court is further of the opinion that citation of the learned counsel for the appellants-plaintiffs titled as **MB Ramesh (D) by LRS. VS. KM Veeraje Urs (D) by Lrs and others 2013 (2) RCR (Civil) 932** is not applicable to the facts of this case because the said authority is applicable to case relating to the property a falling under the head of ancestral property and in the present case admittedly the property in dispute is self acquired property of Khushi Ram. Hence the citation relied upon by the learned counsel for the appellants-plaintiffs is not applicable in this case.*

18. *No other point has been argued or raised during the course of arguments.*

19. *In view of above discussion, the learned lower court has discarded the pleas of appellants- plaintiffs being devoid of any merits and on the other hand has rightly appreciated the oral as well as documentary evidence of the respondents- defendants and rightly arrived at a conclusion by dismissing the suit of the appellants-plaintiffs. There is nothing on record calling interference of this court in the findings arrived by the learned lower Court, which are based on the correct appreciation of facts and evidence on the file. Therefore, I up hold the findings of the learned lower Court on all the issues and dismiss the present appeal being without*



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*merits. No orders as to costs. Decree sheet be prepared. Lower Court record alongwith copy of judgment be sent back. Appeal file be consigned to the record room.”*

12. Hence, the present appeal.

13. Learned counsel for the appellant has vehemently argued that both the Courts failed to take into consideration that age of Khushi Ram was 90 years as on the date when the *Tabdeel Malkiatnama* was executed by him, hence, he was not in a sound disposing mind. He further contends that a will had also been executed by Khushi Ram in favour of the appellant-plaintiff and that the said aspect has not been taken into consideration. A specific averment had been made in the said will by Khushi Ram (since deceased) about the natural love and affection with the appellant-plaintiff and as such there was no occasion for Khushi Ram to ignore the natural line of succession and to execute a *Tabdeel Malkiatnama* in favour respondents-defendants.

14. Counsel for the appellant-plaintiff is confronted with the fact that there is no such plea taken by the appellant-plaintiff in the Suit or at the time of Appeal to the effect that a will has been executed by late Khushi Ram in his favour. No issue with regard to existence of a will and/or validity of the will had ever been framed. Hence, once the plea had not been raised by the appellant-plaintiff at the initial stage, he cannot be permitted to raise a new plea of fact at the stage of second appeal. Besides, there is no application for seeking permission for leading any additional evidence under Order 41 Rule 27 or for amendment of plaint filed alongwith the present appeal. Hence, the argument has no merit and is denied.



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15. Adverting to the second argument pertaining to the indisposing state mind of Khushi Ram at the time of execution of *Tabdeel Malkiatnama*, the said argument has already been considered by both the Courts concurrently and they have recorded a specific finding that there was no evidence adduced by the appellant which could establish that Khushi Ram was not in a disposing state of mind or that he could not understand the implications of his action. Hence, a mere self serving plea which has not been substantiated by leading any cogent or convincing evidence, cannot at this stage be relied upon to set aside the judgments that have been passed by both the Courts after having considered the arguments.

16. I find that there is no illegality, perversity or impropriety in the judgments passed by both the Court below. The appellant has failed to point out non-consideration of any essential material or evidence to establish that the findings recorded by the Courts are not based upon sound consideration of the evidence adduced before the Courts and that the conclusion drawn is flawed and unsustainable.

17. The instant Regular Second Appeal is accordingly **dismissed**. The judgments and decrees dated 11.09.2014 and 09.02.2016 passed by the Civil Judge (Sr. Divn.) Hoshiarpur and Additional District Judge, Hoshiarpur, are upheld.

18. All pending civil misc. application(s), if any, stand disposed of.

(VINOD S. BHARDWAJ)  
JUDGE

23.01.2025

Mangal Singh

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