



RSA-3618-1997 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA-3618-1997 (O&M)
Reserved on: 18.08.2025
Pronounced on: 19.08.2025**

Amarjeet Kaur and Another

.....Appellants

VERSUS

Jeon Singh (Since Deceased) through LRs & Others

.....Respondents

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Kanwalpreet Singh Bhangu, Advocate for the appellants.

Mr. Avnish Mittal, Advocate with
Ms. Aparna Singhal, Advocate for respondents No.1 to 4.

MANDEEP PANNU, J

1. The present Regular Second Appeal has been filed by Amarjeet Kaur and another, appellants/defendants No. 5 and 6 (hereinafter referred to as, 'the appellants'), against the judgment and decree dated 03.09.1997 passed by the learned lower Appellate Court whereby the judgment and decree dated 20.02.1992 of the learned trial Court dismissing the suit of the plaintiff Jeon Singh was set aside and the appeal of the plaintiff was allowed.

Facts of the Case

2. The plaintiff Jeon Singh instituted a suit for declaration to the effect that he was the owner of the suit land and that the wrong entries in the revenue record were liable to be corrected. He also sought a declaration that the sale deed dated 9 June 1978, executed in favour of his sons, be rectified in his favour, along with the consequential relief of possession and permanent injunction restraining the defendants from alienating or transferring the land.



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The plaintiff averred that Sadhu Ram, son of Jaimal Singh, was the owner of the suit property and had agreed to sell the land to him by executing three agreements to sell, on receipt of earnest money. It was pleaded that the sale deed dated 9 June 1978 was in fact executed by Sadhu Ram after receiving the balance sale consideration, which was wholly paid by the plaintiff. According to him, defendants No. 1 to 4 and Gurpal Singh (since deceased), his sons, did not contribute any part of the sale consideration and were merely holding the land as trustees in fiduciary capacity for him. Since he had paid the entire sale consideration, he claimed that the sale deed in favour of his sons was liable to be rectified in his favour.

3. Defendants No. 1 to 4 and defendant No. 7 filed their written statements admitting the claim of the plaintiff and expressed no objection to the declaration sought. However, defendants No. 5 and 6, the widow and daughter of Gurpal Singh (since deceased 'one of the sons of Jeon Singh'), contested the suit. They asserted that Gurpal Singh was a co-owner to the extent of 1/5th share and that the sale deed was validly executed in favour of defendants No. 1 to 4 and Gurpal Singh. They pleaded that after the death of Gurpal Singh, they had inherited his share and were in possession thereof. It was further contended that the suit was barred by limitation, filed in collusion with the other defendants to defeat the rights of defendants No.5 and 6, who are class-I legal heirs of Gurpal Singh s/o Jeon Singh, and was not maintainable.

4. Replication to the written statement was filed by the plaintiff denied the contentions raised therein.



5. Following issues were framed:-

- 1) Whether the suit land was purchased by the plaintiff from Sadhu Ram vide registered sale deed dated 09.06.1978 for a sale consideration of Rs.40,000/-? OPP
- 2) Whether the defendants No.1 to 4 and Gurpal Singh deceased were holding the suit land as trustees for the plaintiff? If so, to what effect? OPP
- 3) Whether the plaintiff cannot take any benefit for claiming the suit land owned by him as alleged in para No.19 of the written statement of defendants No.5 & 6? OPD
- 4) Relief.

6. Both sides led evidence.

Findings of the Trial Court

7. The learned trial Court observed that the sale deed dated 09.06.1978 stood in the name of defendants No. 1 to 4 and Gurpal Singh (predecessor of defendants No. 5 and 6). It was not the case of the plaintiff that the names of his sons were entered in the sale deed by mistake or by fraud played either by them or by the vendor. Rather, the case of the plaintiff amounted to asserting that the land was purchased by him benami in the name of his sons.

8. The learned trial Court, therefore, held that in view of Section 2(1) read with Section 4(1) of the Benami Transactions (Prohibition) Act, 1988, no suit or claim to enforce a right in respect of property held benami could be entertained. It was concluded that the plaintiff had no right, title or interest in the suit property; that the sale deed could not be rectified, and accordingly the suit was dismissed.

**Findings of the Lower Appellate Court**

9. On appeal, the learned lower appellate court reappraised the evidence. It found that the agreements to sell in favour of the plaintiff stood proved and that the entire sale consideration had been paid by him to Sadhu Ram. It further held that the plaintiff was the real purchaser of the property, although the sale deed was executed in favour of his sons.

10. The learned lower Appellate Court also noted that rectification of the sale deed could not be granted as it was not a case of mutual mistake. Yet, it held that since the Benami Transactions (Prohibition) Act, 1988 had only prospective operation, and as the transaction date is prior to 1978, the plaintiff remained the real owner of the land. Accordingly, it declared the plaintiff as the owner of the suit property and entitled him to recover possession. The appeal was thus allowed, and the suit decreed.

11. Feeling aggrieved by the above said judgment of reversal passed by the learned lower Appellate Court, present Regular Second Appeal has been filed by the appellants-Amarjeet Kaur and another against respondents – Jeon Singh and Others. It is relevant to mention here that respondents No.1 and 6 died during the pendency of the present appeal and legal heirs of respondent No.1 are already on file as respondents No. 1 to 4.

Submissions of learned counsel for the parties:-

12. Learned counsel for the appellants/defendants No. 5 and 6 has argued that the learned Appellate Court erred in reversing the well-reasoned findings of the trial Court. It is submitted that the suit was filed after more than 11 years of execution of the sale deed and was hopelessly barred by limitation. The plaintiff himself had procured the execution of the sale deed in favour of his sons and could



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not, after the lapse of more than a decade and only upon the death of Gurpal Singh, seek to deprive his widow and daughter of their lawful share. It is further urged that rectification was specifically declined by both courts below, and without rectification, title could not be declared in favour of the plaintiff. It is emphasized that an agreement to sell does not confer title, and once the registered sale deed stands in favour of the defendants, the plaintiff cannot be declared owner.

13. On the other hand, learned counsel for the plaintiff/respondents No.1 to 4 has supported the judgment of the learned Appellate Court. He has argued that the plaintiff had proved execution of the agreements to sell, payment of consideration, and that the sale deed was procured out of his funds. It is contended that since the Benami Act has only prospective application, the plaintiff's right as real owner remains intact, and the appellate court has rightly declared him as the owner.

Findings

14. I have carefully considered the rival contentions and examined the record.

15. The pivotal issue in this case relates to the relief of rectification and declaration claimed by the plaintiff. The trial court had framed an additional issue as to whether the sale deed dated 9 June 1978 was liable to be rectified. The burden was on the plaintiff. Both the courts below have concurrently held that the plaintiff has failed to prove that the names of his sons were inserted in the sale deed either by mistake or fraud and that the case does not fall within the ambit of Section 26 of the Specific Relief Act, 1963. Thus, rectification of the sale deed could not be granted. These findings have attained finality as these are not challenged by any party.



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16. In such a situation, the learned Appellate Court was not justified in decreeing the suit by declaring the plaintiff as the owner merely on the basis of the agreements to sell and payment of sale consideration. It is trite that an agreement to sell does not by itself confer title. Once the registered sale deed stands in the names of the sons of the plaintiff, and the relief of rectification has been declined, the declaration of ownership in favour of the plaintiff is wholly untenable. Sale deed in question till date stands in the name of sons of Jeon Singh-plaintiff (including Gurpal Singh, predecessor in interest of appellants herein)

17. Learned trial Court has erred in treating the matter as one of benami transaction. The controversy did not essentially relate to the applicability of the Benami Transactions (Prohibition) Act, 1988, but to the legal effect of the sale deed standing in favour of the sons of the plaintiff. The plaintiff himself was instrumental in having the sale deed executed in their favour, and he remained silent for over 11 years. The suit was filed only after the death of Gurpal Singh, clearly with the intention of depriving his widow and daughter of their lawful share. Moreover, it was never pleaded by plaintiff that transaction being Benami, sale deed be set aside. No findings were required to be given on Benami transaction by the Courts below. The same be ignored.

18. The plea of limitation is also well founded. The sale deed was executed in the year 1978, while the suit was filed in 1989. No case has been made out as to why the plaintiff waited for more than a decade to seek rectification or declaration. The suit is, therefore, barred by limitation.

19. The learned lower Appellate Court, while affirming that the sale deed could not be rectified, paradoxically proceeded to declare the plaintiff as the owner. This reasoning is self-contradictory. Once the registered sale deed stands,



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and no rectification is permissible, the title must remain with the recorded vendees. The appellate court has thus acted without jurisdiction in granting relief to the plaintiff.

Conclusion

20. In view of the foregoing discussion, I am of the considered opinion that the judgment and decree of the learned lower appellate court cannot be sustained. The suit of the plaintiff having been rightly dismissed by the trial court, the appellate court erred in law in decreeing the same.

21. Accordingly, this Regular Second Appeal is allowed. The impugned judgment and decree dated 03.09.1997 passed by the learned lower Appellate Court is set aside, and that of the trial Court dismissing the suit of the plaintiff vide judgment and decree dated 20.02.1992 is upheld.

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

August 19, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No