

Jagga Singh and ors. Vs. Mal Singh and ors.

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Court : Punjab and Haryana

Decided On : Mar-06-1996

Reported in : (1996)113PLR272

Judge : N.K. Kapoor, J.

Acts : [Specific Relief Act, 1963](#) - Sections 26(1); [Evidence Act, 1872](#) - Sections 92

Appeal No. : Civil Regular Second Appeal No. 842 of 1988

Appellant : Jagga Singh and ors.

Respondent : Mal Singh and ors.

Advocate for Def. : O.P. Goyal, Sr. Adv. and; Parmod Goyal, Adv.

Advocate for Pet/Ap. : M.S. Ratta, Adv.

Disposition : Appeal allowed

Judgement :

N.K. Kapoor, J.

1. This is defendants' regular second appeal.

Plaintiff filed a suit for declaration to the effect that he is owner to the extent of 1/3rd share of land measuring 7 Bighas 8 Biswas Pukhta comprised in Khewat No.

126 Khatauni No. 154, Khasra Nos. 838, 839 and 853 with structures of house existing thereon with all rights appurtenant thereto and is also owner of 1/3rd share of land measuring 1B-1B-9B comprised in Khewat No. 126 Khatauni No. 155 and 156, Khasra No. 331 min. (0-12-9) and khasra No. 331 min (0-9-0) situated in village Issewal. In addition thereto, he is owner to the extent of 1/3rd share measuring 7 Biswas comprised in khewat No. 126 Khatauni No. 157 Khasra No. 332/2 situated at village Issewal and that the Khasra Nos. have been fraudulently got entered by the defendants in their names in the registered sale deed dated 5.1.1981. According to the case of the plaintiff, he intended to part with his holding situated on the northern side of the Rajwaha whereas in the sale deed land situated on the Southern side of the Rajwaha stands mentioned in the impugned sale deed. In fact, at the spot on this land existed the houses of the plaintiff as well as other co-sharers. The plaintiff did not intend to part with the land situated on the Southern sides of Rajwaha and this has been got incorporated fraudulently by the defendants in connivance with the petition writer in the impugned sale deed.

2. The defendants in their written statement resisted the claim of the plaintiff stating therein that the plaintiff agreed to part with the land as finds mentioned in the sale deed for a valuable consideration. Pursuance to the registration of the sale deed, mutation too has been sanctioned and ever since then they are enjoying the property purchased to the exclusion of others. The defendants specifically denied the assertion of the plaintiff that the sale was intended to be in respect of the property situated on the northern side of the Rajwaha. The plea raised by the plaintiff that wrong Khasra Nos. have been incorporated in the sale deed too has been specifically denied. By way of preliminary objection, it has been stated that the suit of the plaintiff is barred by limitation and otherwise too the plaintiff is estopped by his own act and conduct to file the present suit.

3. On the pleadings of the parties, following issues were framed :-

1. Whether plaintiff is entitled to declaration prayed for OPP

1-A. Whether the suit in the present form is not maintainable OPD.

2. Whether sale deed executed by the plaintiff on 5.1.1981 was a result of misrepresentation and fraud? OPD.

3. Whether the suit of plaintiff is within time OPP

4. Whether the plaintiff is estopped by his Act and conduct from filing the present suit OPD.

5. Relief.

4. The trial court took up issues No. 1, 2 and Additional Issue No. 1A together and after considering the evidence led by the parties found some substance in the plea of the plaintiff to the effect that wrong khasra Nos. had been incorporated in the sale deed fraudulently and so the sale deed is liable to be set aside. This way the Court decided all the three issues in favour of the plaintiff and against the defendants. Issue No. 4 was decided against the defendants. Under issue No. 3, the Court came to the conclusion that the suit is within limitation. Resultantly, the suit was decreed.

5. The appellate court on reappraisal of evidence found no ground to differ with the conclusion arrived at by the trial Court and so affirmed the same in the appeal.

6. Challenging the concurrent findings recorded by the Courts below, the learned counsel for the appellants has termed these to be wholly illegal and otherwise unwarranted as per facts on record. According to the counsel, the courts below have miserably failed to construe the matter in the right perspective. The plaintiff if at all could bring the suit, the same at best could be filed for rectification of the sale deed in terms of Section 26 of the Specific Relief Act and that too within the period of limitation. No suit having been filed for rectification of the registration of sale deed the present suit was wholly misconceived and so the judgment and decree of the Courts below deserves to be reversed. Otherwise too, the present suit having been filed after the expiry of period of limitation, i.e. from the date of registration of the sale deed, the courts have wrongly held the same to be within limitation, the impugned decree deserves to be reversed on this ground as well. According to the counsel, the court below have wrongly come to the conclusion that a fraud had

been played upon the plaintiff while mentioning the khasra Nos. of the land subject matter of the sale deed. There is neither any averment to this effect nor the evidence led proving fraud made basis to set aside a validly executed document. According to the counsel, the impugned decree deprives the appellant of a portion of land i.e. the area which as per decree comes to the share of the appellant fall short of the area which he purchased vide the impugned sale deed. No explanation had been given by both the Courts in this regard. The suit has not been filed in terms of Section 26 of the Specific Relief Act nor the same is within limitation. The Courts below have erred in by passing the objections raised by the appellants in this regard and for those precise reasons, the judgment and decree of the Courts below is unsustainable in law.

7. Counsel for the defendant on the other hand argued that it is a clear case of fraud practiced by the plaintiffs upon an innocent, illiterate agriculturist. A perusal of the sale deed makes it abundantly clear that the plaintiff intended to sell the agricultural land and not the land upon which there existed house/houses. Had it been so, the sale deed would have make mention of the houses as well. Precisely for this reason as soon as it came to the knowledge for the plaintiff an attempt was made to resolve the same and with the intervention of the panchayat of the village, the parties agreed to resolve the same. The documents are Exhibit P-1 and P-2. The matter having been finally resolved vide documents Exhibit P-1 and P-2, the present suit was filed to get the revenue record duly corrected as per agreement of the parties. Thus, in view of the comprise between the parties, the sale deed stood rectified and so the question of rectification of the sale deed had in fact, become non-existent. On merit, the counsel argued that on the northern side of the Rajwaha the plaintiff own and possess agricultural land which he, in fact, intended to sell and it is merely by an oversight that in fact, on account of fraudulent act of the defendants that the land situated on the southern side of the Rajwaha was got recorded in the sale deed. As regards the slight discrepancy in the area which has now accrued on account of the sale deed, the same is quite insignificant and hence cannot be made basis for setting aside the well considered judgment and decree of the Courts below.

8. It is the case of the plaintiff that he intended to sell his land situated on the northern side of the Rajwaha vide sale deed dated 5.1.1981 and it is on account of the fraudulent act of the defendant that Khasra Nos. situated on the southern side of the Rajwaha and comprised of Khasra No. 838, 839, 853, 331 min and 332/2 were got recorded in the sale deed. Except for the use of the word 'fraudulently' no particulars of the fraud and the manner in which it has been practised has been stated in the plaint. Whether such a fraud was practiced in connivance with the petition writer or with the help of some other persons will fall within the realm of conjecture. On reading of the plaint, at best one can state is that the plaintiff intended to part with his land situated on the northern side of the Rajawaha and by mistake or otherwise the land situated on the southern side of the Rajawaha was somehow mentioned in the sale deed dated 5.1.1981. Section 26 of the Specific Relief Act deals with the rectification of the instrument. As per Section 26(1) of the Act when through fraud or mutual mistake of the parties, a contract does not express their real intention then either party can institute a suit to have the instrument rectified. The Court if finds that the instrument does not express the real intention of the parties it in its discretion can direct rectification of the instrument so as to express the intention, of course, without prejudicing the rights of the third party who since have acquired in good faith and for value. It is a discretionary relief and the party has to approach the court with clean hands. The alleged fraud or mistake has to be clearly put. The burden of proof lies heavily on the person seeking rectification. In case of mistake, it is to be mutual and not unilateral. In the present case, the plaintiff has sought a declaration seeking rectification of the instrument (though not formally seeking such a relief) on the ground that the fraud had been practised upon him. The evidence adduced by the plaintiff is oral and quite general in content. There is no specific allegation of the fraudulent act and the manner in which it has been practised in the deposition of the plaintiff or in the statement of the other witnesses examined by him to prove the writing Exhibit P-1 and P-2. Section 92 of the Evidence Act procludes a person from adducing oral evidence to contradict, vary or add to the terms of agreement in writing. It says that as and when terms of any contract grant or other disposition of property has been reduced in the form of a document no evidence of any oral agreement or statement shall be admitted between the parties to be an instrument

for the purpose of contradicting, varying, adding or subtracting from its terms. Section 92 proviso (1), however, permits a party to prove such a fact which would invalidate any document or would entitle any person to any decree or order relating thereto such as fraud, intimidation, illegality, want of due execution etc. No doubt, oral evidence is permissible in terms of Section 92 of the Evidence Act to vary or contradict a written document yet such is to be sufficient so as to reach on irresistible conclusion that fraud, in fact, has been practised. The evidence led by the plaintiff when tested falls short of the standard prescribed as per the statutory provision duly interpreted by judicial pronouncements. Concededly, the suit has been filed beyond a period of three years from the date of the registered sale deed. The sale deed was registered in the presence of the parties on 5.1.1981. The rights of the parties flow from this document. Even if it be taken that the instrument could be rectification on account of fraud or mutual mistake in terms of Section 26(1) of the Specific Relief Act, cause to sue for such rectification/declaration accrue to the parties on 5.1.1981 in terms of Section 58 of the limitation Act. The suit having been filed after the period of limitation was not maintainable.

9. In view of the findings on material issue of fraud and limitation, I am of the view that no useful purpose would be served in dilating upon the other aspects of the case. Accordingly, I accept the appeal, set aside the judgment and decree of the courts below, No order as to costs.