

**IN THE COURT OF KAWALJIT SINGH,
ADDITIONAL DISTRICT JUDGE, TARN TARAN.
(UID Number PB0155)**

Case Type	CA
Filing Number	1013/2019 Filing Date: 11.10.2019
Case Number	154/2019 dated 14.10.2019
CNR Number	PBTT0100-5619-2019
Date of Decision	03.09.2022

1. Dr. Gurdial Singh Gill son of Jaswant Singh son of Shri Gopal Singh, resident of 13, Sant Avenue, G.T. Road, Amritsar,
2. Daljit Singh,
3. Lakhbir Singh, both sons of Jaswant Singh son of Shri Gopal Singh, residents of village Dhotian, Tehsil and District, Tarn Taran,
4. Sukhwinder Kaur widow of Ajit Singh son of Jaswant Singh. (Since Died)
5. Harcharan Singh son of Ajit Singh son of Shri Jaswant Singh,
6. Tejinder Singh son of Ajit Singh son of Shri Jaswant Singh,
7. Barjinder Singh son of Ajit Singh son of Jaswant Singh, all residents of Nanak Nagri, Sikhan Wala Road, Kotkapura, District Faridkot.

---Appellants/plaintiffs

Versus

1. Surjit Singh son of Jaswant Singh allegedly resident of Kothi No.380, E-Block, Ranjit Avenue, Amritsar and in fact British Citizen and permanent resident of 10, Dranley Street Gravesend Kent, England (U.K),
 2. Jagwinder Kaur wife of Parminder Singh son of Jagdev Singh, resident of Quarter no.1-A, police colony, D.R. Nagar, Ludhiana,
 3. Ramandeep Kaur daughter of Gurdial Singh son of Karam Singh, resident of village Timmowal, Tehsil Baba Bakala, District Amritsar,
- (....Defendants in suit)
4. Kulwant Kaur daughter of Jaswant Singh son of Shri Gopal Singh wife of Gurdial Singh, son of Mastan Singh, resident of village Tur, Tehsil Khadoor Sahib, District Tarn Taran,

5. Gurmeet Kaur widow of Kashmir Singh son of Jaswant Singh, resident of village Dhotian, Tehsil and District Tarn Taran,
6. Maninder Singh son of Kashmir Singh son of Jaswant Singh, resident of village Dhotian, Tehsil and District Tarn Taran,
7. Jagminder Kaur daughter of Kashmir Singh son of Jaswant Singh, wife of Gurmeet Singh, resident of village Jalalabad, Tehsil Khadoor Sahib, District Tarn Taran.

---Respondents

Civil appeal under Section 96 C.P.C. against the judgment and decree dated 12.09.2019 passed by the court of Shri Sumit Bhalla, Additional Civil Judge (Senior Division) Tarn Taran, whereby the learned trial court has wrongly dismissed the suit of the plaintiffs/appellants.

Claim in Appeal: To set aside the impugned judgment and decree under appeal and to decree the suit of the plaintiffs/appellants as prayed for by way of acceptance of this appeal with costs throughout.

Present: Shri R.S Baghi counsel for appellant no.1 to 3
Shri P.S Kanda, counsel for respondent no.1 to 3
Names of appellant no.5 to 7 deleted vide order dated 16.05.2022

JUDGMENT

This is an appeal moved by the appellants/plaintiffs against the judgment and decree dated 12.09.2019, passed by the Court of Shri Sumit Bhalla, Additional Civil Judge (Senior Division), Tarn Taran.

2. The facts of the case, as per the plaint, are that the defendant no.1 is a British Citizen and has abandoned his Indian Citizenship. Jaswant Singh son of Gopal Singh was owner of the suit land. Hardial Singh son of Jaswant Singh had obtained the citizenship of Germany. Surjit Singh son of Jaswant Singh obtained citizenship of England. After the death of Jaswant Singh, the mutation of his inheritance was to be sanctioned in favour of Daljit Singh, Kashmir Singh, Lakhbir Singh, Ajit

Singh and Doctor Gurdial Singh but the Revenue Official sanctioned the mutation in favour of Hardial Singh and Surjit Singh as well. Since defendant no.1 was a citizen of England, therefore, he was not competent to sell the property situated in India. The sale made by the defendant no.1 is prohibited by Rule 8 of the Foreign Exchange Management Regulations 2000. Defendant No.1 claimed him to be resident of 380 E-Block, Ranjit Avenue, Amritsar, and executed two sale deeds dated 07.04.2015 in favour of defendant no.2 and 3. The defendant no.1 was not competent to execute the sale deeds and as such the same are illegal, null and void, result of fraud and are liable to be set aside. The defendant no.1 prepared forged and fabricated documents. The defendants are further threatening to alienate the suit property.

3. Upon notice, the defendant no.1 appeared and filed his written statement, raising preliminary objections of maintainability of suit, no cause of action, false suit, no locus standi, suit being barred for non-joinder and mis-joinder of necessary parties. On merits, all the material averments were denied and it is admitted that the defendant no.1 is a foreign citizenship but did not abandoned his Indian rights. It is also admitted that the suit property was of the ownership of Jaswant Singh and mutation of inheritance has been sanctioned to in favour legal heirs of Jaswant Singh.

4. Defendants no.2 and 3 filed their separate written statement by raising preliminary objections of no cause of action, non-payment of court fee, no locus standi and non-joinder and mis-joinder of necessary

parties. On merits, it is admitted that the defendant no.1 is a foreign citizen but he did not abandoned his Indian rights and has validly executed sale deeds dated 07.04.2015. It is admitted that Jaswant Singh son of Gopal Singh was owner of the suit land and after his death, mutation of his inheritance was sanctioned in favour of all his legal heirs, including defendant no.1, which was not challenged by them till date. The defendants are bonafide purchasers. Rests of the averments were denied and finally a prayer to dismiss the suit has been made. All other contents of the plaint were denied on merit. A prayer for dismissal the suit was made.

5. Plaintiffs filed the replication wherein they reiterated the facts pleaded in the plaint.

6. On the pleadings of the parties, the learned trial court on 21.12.2017 framed the following issues:-

1. Whether the plaintiffs are entitled to the relief of declaration as prayed for? OPP
2. If so, whether the plaintiffs are entitled for the permanent injunction, as prayed for? OPP
3. Whether the suit of the plaintiffs is not maintainable? OPD
4. Relief

7. In order to prove their case, the appellants/plaintiffs examined appellant/plaintiff no.1 Doctor Gurdial Singh Gill (PW-1) and Karanjit Singh (PW-2) Registry Clerk. Thereafter, evidence of appellants/plaintiffs was closed by order.

8. On the other hand, defendants have examined Harjit Singh (DW-1) and closed their evidence.

9. After hearing the parties and assessing the evidence on record, the learned Trial Court, vide impugned judgment and decree, dismissed the suit. The appeal preferred by the plaintiffs/appellants was dismissed vide impugned Judgment and Decree dated 12.09.2019.

10. It is argued by the learned counsel for the appellants that the sale deeds executed by the respondent no.1 are in violation of Rule 8 of Foreign Exchange Management Regulations 2000 as such they same are liable to be declared and set aside as illegal, wrong, null and void. It is further submitted the respondent no.1 also had furnished wrong identification document in the shape of his expired driving license. It is submitted that the learned lower court has failed to appreciate the real point of controversy between the parties and it has resulted into miscarriage of justice to the appellants and prayed that appeal may kindly be accepted and impugned Judgment and Decree may kindly be set aside and suit of the appellants for declaration and permanent injunction may kindly be decreed with costs.

11. On the other hand it is submitted by the learned counsel for the respondents that there is no illegality or infirmity in the well-reasoned judgment passed by the learned lower court and same needs no interference. It is submitted that original owner admittedly was Jaswant Singh and it also is admitted fact that being one of sons of Jaswant Singh, the respondent no.1 is also legal heir and rightly mutation of inheritance

has been sanctioned by revenue authorities in the name of all the legal heirs. It is submitted that appellants never ever have challenged the legally entered mutation of inheritance of Jaswant Singh. Further it is submitted that the respondent has legally and validly executed the sale deeds of his share of land as never ever abandoned his Indian Rights and Regulation 4 (d) (e) and (f) permits the applicant to alienate his property to any person. Also production of expired driving license as proof of identification is not an offence though person holding expired driving may not be able to legally drive the authorised vehicle. It is submitted that the learned lower court has rightly dismissed the suit of appellants by giving detailed findings on all the issues. Lastly it is prayed that the appeal may kindly be dismissed.

12. I have heard the learned counsels for both the parties and with their able assistance have perused the file carefully.

13. It is the admitted fact of the parties that original owner was Jaswant Singh and that respondent no.1 is one of the legal heirs of Jaswant Singh being his son. It also is admitted fact that said Jaswant Singh has since died and mutation of his inheritance has been sanctioned in favour of legal heirs of Jaswant Singh including respondent no.1. Said mutation of inheritance never ever has been challenged by anyone of the legal heirs of Jaswant Singh, including appellants as appellant/plaintiff no.1 in his cross-examination clearly admitted that he has not moved any application to the revenue department of court of law that the mutation has been wrongly sanctioned. He also admitted that plaintiff no.4 to 9 had

given statement in the Hon'ble High Court that have not filed any suit against the defendants/respondents. Meaning thereby is that even the other plaintiffs, who have not filed this appeal, also admitted that the mutation of inheritance of Jaswant Singh sanctioned in favour of all legal heirs of Jaswant Singh was sanctioned validly and all the legal heirs also acted upon the same.

14. Appellants are alleging that respondent no.1 had abandoned his Indian Rights but it is not so. Even appellants no.1 (PW-1) admitted that respondent no.1 had issued draft for the admission of his son in NRI quota. Meaning thereby is that even the appellants admit that respondent no.1 had never abandoned his Indian Rights. Otherwise also a person of Indian Origin (PIO) has been defined in Regulation 2 (c) of Foreign Exchange Management Regulations 2000 as 'a person of Indian origin' Means an individual (not being a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan), who (i) at any time, held India passport; or (ii) who or either of whose father or mother or whose grandfather or grandmother was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955). Father and mother of respondent no.1 was Citizen of India at the time of commencement of Constitution of India. Thus, being a person of Indian Origin respondent no.1 has sold his land validly and the contention of the learned counsel for the appellants that the same is in violation of Rule 8 of Foreign Exchange Management Regulations 2000 is found to be without merits because Regulation 8 provides that any transaction of the

immovable property in India, which has taken place in the mode otherwise provided in Act or Regulation and which is not permitted by the Act or regulation , is prohibited under Regulation 8 of Foreign Exchange Management Regulations, 2000. In other words the transactions which have taken place in accordance with the Act or Regulations are not prohibited. The case of the respondent no.1 is squarely covered under the regulation 4 of the Foreign Exchange Management Regulations 2000, which reads as follows:

4. Acquisition and Transfer of Property in India by a Person of Indian origin. – A person of Indian origin resident outside India may—

- (a) acquire immovable property in India other than an agricultural property, plantation, or a farm house:
Provided that in case of acquisition of immovable property, payment of purchase price, if any, shall be made out of (i) funds received in India through normal banking channels by way of inward remittance from any place outside India or (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act and the regulations made by the Reserve Bank under the Act; Provided further that no payment of purchase price for acquisition of immovable property shall be made either by traveler's cheque or currency notes of any foreign country or mode other than those specifically permitted by this clause.
- (b) acquire any immovable property in India other than agricultural land/farm house/plantation property by way of gift from a person resident in India or from a person resident outside India who is a citizen of India or from a person of Indian origin resident outside India;
- (c) acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property in accordance with law in force at the time of acquisition by him or the

provisions of these Regulations or from a person resident in India;

- (d) transfer any immovable property in India other than agricultural land/farm house/plantation property, by way of sale to a person resident in India;
- (e) transfer agricultural land/farm house/plantation property in India, by way of gift or sale to a person resident in India who is citizen of India;
- (f) transfer residential or commercial property in India by way of gift to a person resident in India or to a person resident outside India who is citizen of India or to a person of Indian Origin resident outside India.

15. The sales made by the respondent no.1 are clearly covered under the regulation 4 (d), (e) and (f) as he, being a person of Indian origin, was legally competent and is permitted to alienate his land to any person and was not bound by any regulation to take permission from any authority or person in this regard.

16. In so far as the production of an expired license by respondent no.1 as a proof of his identification is concerned the same also is without merits because by expiry of driving license one is not permitted to drive a vehicle but that person whose driving license remains a true fact. There are no allegations if said driving license was forged or fabricated document as even appellant no.1 (PW-1) admitted that he has never moved any application to the police or filed any complaint in this regard that respondent no.1 has forged driving license. Thus, even if an expired driving license was produced before Sub-Registrar by way of his identification does not make the execution of sale deeds invalid. It is more so when the identity of the respondent no.1 was also established by the attesting witnesses as well and Sub-Registrar never objected to it or

had refused to register the sale deeds being validly executed by the respondent no.1 and 2. Rightly the appellants were found not entitled for the grant of declaration or permanent injunction as prayed for.

17. Resultantly, for the foregoing reasons and the discussion made, it is held that the findings recorded by learned lower court on all the issues call for no interference in this appeal which is without any merit. Appeal in hand, as such, is dismissed with costs and the findings recorded by the learned lower court are upheld in this appeal. Lower court file be sent back along with the copy of this judgment. Decree sheet be prepared. Appeal file of this court be consigned to the record room.

Announced: 03.09.2022

**Kawaljit Singh,
Additional District Judge,
Tarn Taran.
UID Number PB0155**

Rahul Sharma Stenographer Grade-II