

2024:PHHC:134057



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

RSA-4950-2011 (O&M)

Reserved on : 11.09.2024

Pronounced on : 15.10.2024

DALBIR

....Appellant

VERSUS

BHOOP SINGH AND OTHERS

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. D.S. Bhinder, Advocate for the appellant.

Ms. Ekta Thakur, Advocate for the respondents.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 25.04.2011 passed by the Trial Court dismissing the suit filed by the plaintiff-appellant herein and the judgment and decree dated 04.11.2011 passed by the First Appellate Court whereby the appeal filed by the plaintiff-appellant was also dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant herein filed a simplicitor suit for declaration that on 18.06.1973 Smt. Aan Kauri widow and Ranjit Singh son of Udmi son of Jassa residents of Kairanwali executed and got registered a sale deed regarding their shares in the land and delivered possession of specific Killa numbers as co-sharers in favour of the plaintiff-appellant and since then the plaintiff-appellant was owner in possession of the suit land as a co-sharer. It was further alleged that

though mutation bearing No.569 dated 24.11.1978 was sanctioned in favour of the plaintiff-appellant but the same was not carried out by the revenue authorities in the rights of record i.e. jamabandi and khasra girdawari. It was further averred that in the copy of the revenue record and in the jamabandi for the year 2007-08, the defendant-respondents have been reflected as owners in column No.4 of the jamabandi. It was further averred that mutation bearing No.1060 dated 31.01.2006, mutation Nos.1112, 1113, and 1114 dated 30.01.2007 and mutation No.1120 dated 31.05.2007 were wrong and were liable to be corrected in favour of the plaintiff-appellant. It was further averred that the defendant-respondents are threatening to dispossess the plaintiff-appellant from the suit property. Hence, the suit.

3. The defendant-respondents filed their written statement raising the preliminary objection that the plaintiff-appellant had no cause of action to file the present suit and that material facts had been concealed from the Court and that the sale deed dated 18.06.1973 was a fictitious and false document. On merits it was denied that Smt. Aan Kauri and Ranjit Singh ever executed and registered the sale deed in favour of the plaintiff-appellant regarding their shares in the suit land and delivery of possession of specific khasra numbers in favour of the plaintiff-appellant was also denied. It was further averred that Smt. Aan Kauri and late Sh. Ranjit Singh were their grandmother and father respectively and on their death their shares came to the defendant-respondents by way of inheritance and they were rightly recorded as such in the revenue records. It was further averred that the mutation No.569 was wrongly and illegally attested in favour of the

plaintiff-appellant which was later on cancelled and that the plaintiff-appellant was always aware of the said fact, however, he chose to keep quiet from 1973 to 2008 till the present suit was filed. Replication was not filed.

4. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to decree for declaration as well as for injunction as prayed for ?
OPP
2. Whether the plaintiff has no cause of action and *locus standi* to file the present suit ? OPD
3. Whether the plaintiff has suppressed and mis-stated true and material facts from this Court ? OPD
4. Relief.

5. The Trial Court dismissed the suit vide judgment and decree dated 25.04.2011 holding that mutation No.569 dated 24.11.1978 (Ex.P-3) had been set aside by the Sub-Registrar vide order dated 01.03.1980 (Ex.D-21). The cancellation was well within the knowledge of the plaintiff-appellant and what the plaintiff-appellant was seeking in the present suit was indirectly challenging the mutation order dated 01.03.1980 in order to circumvent the issue of limitation. It was further held that there was nothing on the record to prove that the possession was with the plaintiff-appellant. It was further held that the sale deed was not proved in accordance with law. The Trial Court further held that the only prayer was for change in the entries in the last jamabandi for the year 2007-08 without praying for the

change in the jamabandies from the year 1978. Aggrieved by the decision of the Trial Court an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 04.11.2011 holding that there was nothing on the record to prove that the plaintiff-appellant was in possession of the suit property and hence a simplicitor suit for declaration was not maintainable. Hence, the present regular second appeal by the plaintiff-appellant.

6. The learned counsel appearing on behalf of the plaintiff-appellant has contended that the sale deed was more than 30 years old and hence was *per se* admissible in evidence. Relying on the case of **Kaushik Premkumar Mishra & Anr. V/s Kanji Ravaria @ Kanji & Anr. [2024(3) RCR (Civil) 582]** learned counsel for the plaintiff-appellant would contend that presumption of correctness attaches to the registered sale deed and there was no requirement of producing any attesting witness.

7. *Per contra*, learned counsel for the defendant-respondents would contend that the suit was filed after a period of 30 years and the same was hopelessly barred by the law of limitation. It is further the contention that a suit for declaration was not maintainable as there was nothing on the record to show that the plaintiff-appellant was in possession of the suit property.

8. Heard.

9. In the present case admittedly the correction sought was only in the jamabandi for the year 2007-08. It is the case set up by the plaintiff-appellant that he was never reflected as being in possession of the suit

property in the revenue records i.e. in the khasra girdawari and the jamabandies. There is not an iota of evidence which was produced on the record by the plaintiff-appellant to show that he was ever in possession of the suit property. Even before this Court learned counsel for the plaintiff-appellant has not been able to point out to any document to show that the plaintiff-appellant was in possession of the suit property. In view thereof, the present suit, which was a simplicitor suit for declaration without seeking the relief of possession, was itself not maintainable. Further still, the order setting aside mutation No.569 dated 24.11.1978 (Ex.P-3) was passed on 01.03.1980 (Ex.D-21). The said order was well within the knowledge of the plaintiff-appellant however he chose not to challenge the same and the present suit was only filed in the year 2009. There is absolutely no explanation forthcoming for the same.

10. There can be no quarrel with the proposition of law as enunciated by the Hon'ble Supreme Court in the case of **Kaushik Premkumar Mishra** (supra), however, the same would not come to the aid of the learned counsel for the plaintiff-appellant inasmuch as in the present case the suit itself was not maintainable in view of the fact that the same was for simplicitor declaration without seeking possession and that there was not an iota of evidence on the record to show that the plaintiff-appellant was in possession of the suit property.

11. In view of the above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal,

being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

15.10.2024
Aman Jain

(ALKA SARIN)
JUDGE

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