

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

1. RSA No.117 of 2011 (O&M)
Date of decision : 18.12.2015

Jatinder Singh and ors.

...Appellants

Versus

Kirpal Singh and another

...Respondents

2. RSA No.120 of 2011 (O&M)
Date of decision : 18.12.2015

Jatinder Singh and ors.

...Appellants

Versus

Kirpal Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. M.S. Rakkar, Sr. Advocate with
Mr. J.S. Virk, Advocate for appellants.

None for the respondents.

AMIT RAWAL, J. (Oral)

Due to inadvertence in the previous order presence of Mr. M.S.

Rakkar, learned Senior Advocate has been wrongly marked for respondents whereas it should have been for appellants. The same is corrected.

This order of mine shall dispose of two Regular Second Appeals arising out of judgment and decree of both the courts below, whereby civil suit bearing No.190-T of 1998 titled as Jatinder Singh & ors. Vs. Kirpal Singh, as well as for permanent injunction, has been dismissed and civil suit bearing No.190-AT of 1998 titled as Kirpal Singh Vs. Labh Singh and ors. for declaration, has been decreed.

Mr. M.S. Rakkar, learned Senior Counsel assisted by Mr. J.S. Virk, Advocate for appellants submits, that both the Courts below have committed illegality and perversity in not granting injunction as respondent-defendant had claimed declaration after lapse of 20 years, in essence, claimed ownership on the basis of the sale deed dated 30.12.1976 registered on 03.01.1977 and mortgage deed dated 11.06.1976. Jamabandi for the year 1978-79, 1998-2001 Khasra Girdwari, much less, judgment and decree dated 29.08.1985 Ex.D1 vide which the appellants-plaintiffs have been shown to be the owner to the extent of 4/5th share has not been taken into consideration. The suit was with regard to the land measuring 7 bigha 9 biswa and thus prays that substantial question of law involves for determination by this Court.

There is no representation on behalf of respondents since 22.01.2014. Though Mr. Amandeep Agnihotri, Advocate had put in appearance on few dates i.e. on 14.07.2011, 13.10.2011, 11.01.2012, 25.03.2013 & 19.08.2013 but later on absented.

I have heard learned counsel for the appellants and appraised

the paper book.

The simplicitor suit for declaration in the absence of challenge to sale deed executed by their father Labh Singh in favour of respondent-defendant or not, is not maintainable. Declaration vis-a-vis ownership would not served any purpose.

There is no limitation to seek declaration on the basis of the title, therefore, suit filed by Kirpal Singh in the year 06.06.1998 with respect to the aforementioned sale deed & mortgage deed cannot be said to have been barred by law of limitation. Both the Courts below have accordingly dismissed the suit of the appellant-plaintiff and decreed the suit of Kirpal Singh after examining the oral and documentary evidence.

I do not intend to differ with the findings rendered by both the Courts below. Even judgment and decree dated 29.08.1985 conforming his right of ownership to the appellant to the extent of 4/5th share but that was with regard to 97 bigha and 19 biswa and not with regard to the 7 bigha 9 biswa, therefore, suit property is different. The aforementioned judgment and decree did not have any bearing in the case.

Accordingly, both appeals are dismissed.

18.12.2015

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**(AMIT RAWAL)
JUDGE**