

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

129

Regular Second Appeal No.2069 of 2015 (O&M)

Date of Decision: October 21, 2015

Smt. Kulbir Kaur

...Appellant

Versus

Malook Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. G.S. Nagra, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Nakodar, dated 08.12.2011, by which the suit filed by the appellant-plaintiff for declaration to the effect that the appellant-plaintiff is owner in possession of the land measuring 18 kanals 15 marlas as detailed in the head note of the claim, situated in village Dhandolwal, Tehsil Shahkot, Hadbast No.78, District Jalandhar, on the basis of oral family settlement dated 01.12.2004 in lieu of maintenance for whole life as owner with a consequential relief of permanent injunction restraining the defendants from alienating the said land/property, stands dismissed and the appeal preferred by the appellant-plaintiff against the same also stands dismissed by the Additional District Judge, Fast Track Court (*Ad hoc*), Jalandhar, on 18.02.2015.

2. It is the contention of learned counsel for the appellant-plaintiff that issue Nos.1 and 1A, which pertain to the entitlement of the declaration as prayed for and that the sale deed dated 11.03.1994 is null and void and not for valuable consideration and is result of fraud, have gone against the

appellant-plaintiff, whereas the plea of the respondent-defendant No.2 that he is the *bona fide* purchaser for consideration regarding the suit land by sale deed dated 11.03.1994 has been found to be against the said respondent-defendant. He, thus, contends that the declaration as prayed for should have been granted, specially when the sale deed has been found to be without consideration and he being not declared as a *bona fide* purchaser.

3. This contention of learned counsel for the appellant-plaintiff cannot be accepted in the light of the detailed reasons, which have been assigned by the Courts below. Reference to para 13 of the judgment passed by the learned Lower Appellate Court would clearly establish that the Court has rightly appreciated the evidence, which has been brought on record and on consideration thereof, has concluded as follows:-

“As per case law “Girdwari and others Vs. Reshmi” 2014(3) Civil Court Cases 543 of Punjab and Haryana High Court, the title of immovable property cannot be transferred by mere admissions. The admission made by Ajaib Singh regarding the delivery of property in favour of plaintiff has no value in the eyes of law. Written statement has been filed by Ajaib Singh on 27.02.2006 but Ajaib Singh has already sold his land to Malook Singh to the extent of ½ share and Tarsem Singh and Pal Singh to the extent of ½ share on 11.03.1994 vide registered sale deed Vasika no. 1816 dated 11.03.1994. When in the year 1994, Ajaib Singh has sold this land then the admission made by Ajaib Singh on 27.02.2006 in his written statement has no value. Ex.C1 which is the document of compromise between Kulbir Kaur and Ajaib Singh was effected on 01.04.2006, but sale deed was executed and registered on 11.03.1994 by Ajaib Singh and at the time of this compromise, Ajaib Singh was not owner of the property in dispute. The sale deed has not been challenged by the appellant till today and moreover, Tarsem Singh and Pal

Singh have not been made party to the suit before the trial court. As per Section 28 of Hindu Maintenance and Adoption Act, the property on which the charge is created is capable of being sold only with the condition that the charge will go with property. Defendant no.2 has purchased the property burdened with charge. Plaintiff can claim her maintenance from the property on which the charge has been created. Ex.D2 to Ex.D5 shows that defendant is paying the maintenance to the plaintiff as per charge created in her favour upon the suit land. The suit has been filed with the collusion of defendant no.1 as defendant no.1 has admitted the claim of the plaintiff in his written statement. It has also come in the evidence that defendant Ajaib Singh has supported the plaintiff in the marriage of her daughter. Ajaib Singh has already sold the property to defendant no.2 along with Tarsem Singh and Pal Singh and later on he has admit the claim of the plaintiff which shows that suit of the plaintiff and defendant no.1 is collusive. The contention of the plaintiff that she has become owner of the suit land on the basis of family settlement is not tenable. The suit land has already sold by Ajaib Singh in favour of defendant no.2 along with Tarsem Singh and Pal Singh and plaintiff has not challenged the sale deed dated 11.03.1994”.

4. Both the Courts below have returned concurrent findings in detail after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

5. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

6. In the light of the dismissal of the appeal, the application for stay i.e. CM No.5407-C of 2015, stands disposed of as infructuous.

October 21, 2015

Puneet

PUNEET SACHDEVA
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I attest to the authenticity and
accuracy of this document

**(AUGUSTINE GEORGE MASIH)
JUDGE**