

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

RSA No.3016 of 2015 (O&M)

Date of Decision: 03.08.2015

Makhan Singh

.....Appellant

Versus

Niranjan Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporters or not? | |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Present:- Mr. Manjit Singh, Advocate,
for appellant.

SHEKHER DHAWAN, J

Present Regular Second Appeal is against concurrent findings of both the Courts below whereby suit filed by plaintiff-appellant for declaration and permanent injunction was dismissed by Court of first instance and appeal dismissed by First Appellate Court.

2. For the sake of convenience the parties are being referred to as per their status before the Court of first instance.

3. Relevant facts for the purpose of decision of appeal that plaintiff-appellant filed suit for declaration and permanent injunction to the effect that he is owner and in possession of land measuring 0 Kanal 06 Marlas comprised in Khasra number 687(0-6) of village Aklia Kalan, Tehsil and District Bathinda. As per plaintiff, his possession as owner on the suit

property is since long and he has already set up two Gobar Gas Plants, Khurlies for cattle, 'Kururies' etc; and also done fencing around the same. The demarcation was done by Revenue Department showing the possession of the plaintiff over the suit property as per report dated 18.05.2010. Plaintiff became owner in possession of the suit land on the basis of agreement itself. However, defendants want to grab the suit land. They tried to do so and matter was reported to the police vide FIR No.57 dated 26.05.2010 at Police Station Nehianwala, District Bathinda.

4. Defendants had taken the plea that as per demarcation report submitted by revenue official, the suit property is joint between the parties and defendants have half share in the said land as per revenue record. It is settled law that every co-sharer shall be deemed to have been in possession of every inch of joint property till the same partitioned by a competent revenue authority. The alleged agreement of sale is forged and fabricated document. Kartar Singh was not having any legal necessity to alienate the suit property to Makhan Singh as the suit property has not been partitioned by any competent authority and suit deserve to be dismissed.

5. Court of first instance after appreciating the oral and documentary evidence returned the findings that plaintiff failed to establish his exclusive possession over the suit land. Rather as per revenue record the entire property of Kartar Singh was equally divided amongst plaintiff and defendant No.1 and they became joint owner in joint possession of entire property of Kartar Singh. No partition had taken place regarding the property inherited by both the parties and as such suit of the plaintiff was dismissed. Rather plaintiff and defendants were also entitled to joint possession on the suit land on the basis of revenue record. Plaintiff

remained unsuccessful before First Appellate Court and as such present Regular Second Appeal before this Court.

6. Learned counsel for the appellant took the plea that both the Courts below have fell in error while ignoring the material facts of the case that Kartar Singh was the owner of the property who had sold the same in favour of appellant for consideration of ₹50,000/- on 08.01.2007 and received the entire sale consideration from the appellant in presence of Bhola Singh and Guranditta Singh. Agreement of sale was in respect of same property which was executed on the same date and sale deed was to be executed on the asking of appellant. Appellant always remained willing and ready to perform his part of the agreement but unfortunately Kartar Singh died on 21.01.2007 and petitioner could not get the sale deed executed and registered from Kartar Singh as per terms of the agreement. Appellant has become owner in possession of the suit land so the said findings recorded by both the Courts below be set aside.

7. Having considered the submissions made by learned counsel for the appellant this Court is of the considered view that both the Courts below have recorded the findings of fact that both the parties to the litigation are joint owner as per revenue record. More so, Kartar Singh was having half share in the land in dispute i.e. Khasra No. 687(0-6) of village Akliya Kalan, Tehsil and District Bathinda. He was not competent to alienate the entire khasra number. There was no cogent evidence on the file to return the findings that plaintiff-appellant was in possession of the suit property bearing Khasra No. 687(0-6). The Courts below also returned the findings that plaintiff himself was contradictory in his version regarding possession over the suit property. At one state he was claiming that he was

in possession of the suit property for the last 60 years and at the same time he was taking the plea that possession of the suit land was delivered to him on 08.01.2007. The demarcation report was not proved on the file as per law. The findings of fact have been recorded by Courts below that Khasra No. 687(0-6) measuring 6 Marlas is part of entire suit land measuring 344 Kanals 19 Marlas which is a joint land between the owners. As co-sharer he is not competent to alienate specific khasra number unless the same finally partition by revenue proceedings.

8. The said concurrent findings of fact do not involve any substantial question of law calling for interference by this Court by way of present Regular Second Appeal. Such a law was laid down by Hon'ble Supreme Court in case **Santosh Hazari Vs. Purushottam Tiwai (dead) by LRs., 2001(3) SCC 179** that if concurrent findings were recorded by both the Courts below and, there being no substantial question of law involved in the case, Regular Second Appeal is not maintainable as per provisions of Section 100 of Code of Civil Procedure.

9. In view of the above present Regular Second Appeal being without any merits stand dismissed.

(SHEKHER DHAWAN)
JUDGE

August 03, 2015
msd