

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

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**R.S.A No. 583 of 2015(O&M)
Decided on : February 19, 2014**

Rampat @ Partap Chand ... Appellant.

Versus

Phholia @ Phool Chand & Ors. ... Respondents

CORAM : HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. J.P.Sharma, Advocate, for the appellant.

Mahavir S. Chauhan, J. (Oral)

By way of this regular second appeal, plaintiff impugns the correctness of judgment and decree dated 31.07.2014, whereby learned Additional District Judge, Narnaul ('first appellate Court' – for short) has affirmed dismissal of plaintiff's suit for declaration by learned Civil Judge (Senior Division), Narnaul, ('trial Court' – for short) vide judgment/decree dated 11.02.2011.

The appeal is barred by time, but I have heard learned counsel for the appellant on merits.

It is argued by the learned counsel that both the Courts below have failed to appreciate the evidence available on record in right perspective and this has resulted into miscarriage of justice.

Facts and circumstances of the case as noticed by the learned first appellate Court are as under:-

“The facts of the present case are that the plaintiff as well as the mother of defendant No.1 were coming gair morusi tenants of the land comprised in khewat no.293 Khatoni no.517, Khasra No. 5593/3-0, 5594 min/4-19, 5591/2-0 kita 3 total area measuring 9 bigha 19 biswa. Defendant No.2 was the owner of the aforesaid land, who agreed to alienate this land in equal share to the plaintiff as well as to the defendant No.1 by virtue of agreement dated 09.12.1970 in the sum of Rs.7350/-. Defendant No.3 received a sum of Rs.1350/- on 09.12.1970 and remaining amount of the sum of Rs.6,000/- was required to be payable at the time of registration of sale deed dated 15.06.1971. Defendant No.1 paid the amount in accordance with his share. Plaintiff was the uncle of the defendant No.1. At the time of execution of agreement dated 09.12.1970, the defendant No.1 received a sum of Rs.3,000/- and other expenses of registered stamp etc., from him, who also assured to execute the sale deed in his favour in equal share. Defendant No.1 in collusion with defendant No.2 got the sale deed bearing No.228 dated 22.05.1971 executed in favour of the defendant No., wrongly, illegally and no share of any land was transferred with the plaintiff. The sale deed No.228

dated 22.05.1971 was wrong against law and facts. Subsequently, the mutation was entered, which was also wrong, against law and facts. The plaintiff is still in possession to the extent of half share of the aforesaid mentioned land. The plaintiff about one week ago before filing the present suit came to know about the facts of the case and after giving notice to the defendants, the claim of the plaintiff was not accepted.”

Suit was contested by defendants/respondents No. 3 to 8 (respondent No.1 was proceeded against ex-parte while respondent No.2 was given up) by filing written statement wherein all the allegations of the suit were denied and it was stated that the agreement dated 09.04.1970 did not confer any title on the plaintiff-appellant after expiry of 33 years and it had, even otherwise, been cancelled. Sale Deed No.228 of 1971 was not based upon fraud and misrepresentation. Mutation sanctioned on the basis of the sale deed could not be said to be illegal. It was further stated that defendant No.1 had alienated the suit land in favour of defendants No. 3 to 8 by way of sale deed No. 892 of 28.07.2003 and Mutation No.6469 had also been recorded. The suit land was further sold by virtue of sale deed No. 472 dated 16.05.2008 and some portion thereof was sold in favour of Maya Devi wife of Rajesh Kumar vide sale deed No.1975 dated 10.09.2008.

After replication was filed, learned trial Court identified from the pleadings of the parties following issues:-

- 1) Whether the plaintiff is owner to the extent of half share in the suit land?OPP
- 2) Whether the plaintiff is in possession over the suit land as co-sharer?OPP
- 3) Whether the sale deed no.228 dated 22.05.1971 is illegal and not binding on the rights of the plaintiff?OPP
- 4) Whether the mutation sanctioned on the basis of sale deed No.228 is also illegal and liable to be set aside?OPP
- 5) Whether the plaintiff deserves for relief of injunction as prayed ?OPP
- 6) Whether the suit is not maintainable in the present form?OPD
- 7) Whether plaintiff is estopped to file the suit by his own act and conduct?OPD
- 8) Whether the plaintiff has no locus standi to file the suit?OPD
- 9) Whether the suit is barred by limitation?OPD
- 10)Whether the defendants have become owners of the suit land by way of adverse possession?OPD
- 11)Relief.

Both the sides adduced evidence and were heard, but learned trial Court having found the appellant to have failed to establish his plea

dismissed his suit vide judgment/decreed dated 11.02.2011 which as aforesaid has been upheld by the learned first appellate Court vide/judgment decreed dated 31.07.2014.

A perusal of the record would reveal that the appellant has based his claim on the allegation of fraud but has not been able to bring any evidence, whatsoever, to prove the circumstances of fraud. He has also failed to explain delay of 33 years in raising his grievance in the matter.

Nothing to the contrary could be shown during the course of hearing. Further, this regular second appeal is not shown to involve any question of law, much less a substantial one I, therefore, regret my disinclination to interfere with the well reasoned and concurrent findings of fact recorded by the Courts below. Dismissed.

In view of dismissal of the appeal, application for temporary injunction is rendered infructuous and is disposed of as such.

No costs.

February 19, 2014
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[Mahavir S. Chauhan]
Judge