

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

**Date of decision:8.1.2016**

**1.**

**RSA No.3230 of 1997(O&M)**

**Mohan Singh**

**....Appellant**

**VERSUS**

**Prehlad Singh and others**

**.....Respondents**

**\*\*\*\*\***

**2.**

**RSA No.3255 of 1997(O&M)**

**Ram Kishan**

**....Appellant**

**VERSUS**

**Prehlad Singh and another**

**.....Respondents**

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA**

Present: Mr. Abhay Sharma, Advocate for  
Mr. K.S. Dadwal, Advocate for the appellant(s).

None for the respondent(s).

**HEMANT GUPTA, J.(Oral)**

This order shall dispose of two appeals bearing RSA No.3230 of 1997 arising out of suit for permanent injunction filed by the respondents and RSA No.3255 of 1997 arising out of suit for declaration filed by the appellants wherein the challenge was to the sale deed dated 07.02.1989 on the ground that the same is void, illegal, without consideration and legal necessity.

For the facility of reference the facts are being taken from RSA No.3230 of 1997 wherein the defendant is in second appeal aggrieved against the judgment and decree passed by the Courts below whereby suit for injunction in respect of land measuring 12 kanal 5 marla was decreed.

The plaintiff claims to have purchased the land measuring 12 kanal 5 marla from one Garib Dass vide sale deed dated 07.02.1989 (Ex.P1). On the basis of purchase, the plaintiff claims to be in possession of the said land whereas the defendants are other co-sharers who are threatening to interfere in the possession and therefore, the plaintiff claimed a decree of permanent injunction.

The stand of the defendant before the learned trial Court was that the plaintiff is neither owner nor in possession of the suit land and that plaintiff had earlier filed a suit for injunction which was withdrawn. Therefore, the second suit is not maintainable. It was also alleged that the sale deed dated 07.02.1989 is illegal, void, without jurisdiction and without consideration and that plaintiff has never purchased the land in dispute.

On the basis of respective pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the plaintiff is in possession of the suit land as owner? OPP
2. Whether the plaintiff is entitled to the injunction prayed for? OPP
3. Whether the suit is barred under Order 23 Rule 4 CPC? OPD
4. Whether the defendants are entitled to the compensatory costs, if so, its quantum? OPD
5. Relief.

In proof of its case, the plaintiff appeared as his own witness as PW-3 and also examined Gajjan Singh as PW-1 to prove the sale deed dated 07.02.1989 and also receipts Ex.P2 to Ex.P8.

PW2 Sita Ram is the witness of the sale deed. On the other hand, the

defendants examined Gurdev Singh as DW-1 and Ranjha Ram as DW-3 whereas one of the defendants Mohan Lal appeared as DW-2.

On the basis of the evidence led by the parties, learned trial Court has returned a finding that sale deed dated 07.02.1989 (Ex.P1) was executed by Garib Dass in favour of the plaintiff in respect of land measuring 12 kanal 5 marla, therefore, the plaintiff is owner of the suit land. It was also found that the possession was delivered to the plaintiff and thus, he is in possession and owner.

In appeal, learned first Appellate Court examined the order dated 15.05.1989 (Ex.D1) passed by the Assistant Collector IInd Grade regarding correction of khasra girdawari in favour of the defendant-Ram Kishan through his attorney Mohan Singh. Learned first Appellate Court found that the said order was passed during the pendency of the suit and that Prehlad Singh, the plaintiff, was not party to such proceedings. Apart from the order dated 15.05.1989 (Ex.D1), the defendant has not produced any evidence to prove his possession over the suit land.

Before this Court, the defendant-appellant has sought to assert that the plaintiff has failed to prove his possession over the suit land and that the order Ex.D1 corrects the khasra girdawari in favour of the defendant and, such order has been ignored from consideration and that Garib Dass, the vendor, was never examined to prove the sale deed in favour of the plaintiff.

In the present second appeal, no substantial question of law has been framed nor arises for consideration. It is a pure finding of fact that as to whether the plaintiff is owner and in possession of the

suit land. The non-examination of Garib Dass to prove the sale deed is not material in as much as the vendee has appeared as a witness and also examined the attesting witnesses. There is no other evidence that Garib Dass was not the owner of the land and was not competent to sell the land. Therefore, the registered instrument of sale proved by the witnesses who were present at the time of execution of the sale deed proves the sale deed dated 07.02.1989 (Ex.P1). Since, Garib Dass was the owner and in possession of the suit land, he was competent to deliver possession of the suit land to Prehlad Singh on 07.02.1989.

The present suit was filed on 21.04.1989, the order of correction of khasra girdawari was passed on 15.05.1989 i.e. after the filing of the suit and at the back of plaintiff - Prehlad Singh. Such order has been rightly not taken into consideration. Still further, the khasra girdawari does not carry any presumption of correctness and that an order of correction was passed after the filing of the suit. It is the proof of possession before the Civil Court which would be relevant in the circumstances. Both the Courts have returned concurrent finding of fact that the plaintiff is owner and in possession of the land.

In respect of RSA No.3255 of 1997, the learned trial Court returned a finding that there is no evidence that the property in question is ancestral. Mere fact that Garib Dass inherited property from his father would not show that the property is ancestral or is Joint Hindu family property as co-parceners in the hands of sons.

Such finding has been affirmed by learned first Appellate Court. The learned first Appellate Court found that general principle of succession is that in case of male, the first rule is that the property of a male Hindu dying in-estate shall devolve according to the provision of Chapter II and Class I of the Schedule thereof, which provides that if there is a male heir of Class I then the property will vest with the heirs mentioned in Class I of the Schedule. Section 6 is exception to the general rule contained in Section 8 of the Hindu Succession Act, 1956. It was found that the plaintiff has failed to prove that the parties constitute Joint Hindu Family and that they are governed by rule of survivorship and not by inheritance. Such is the finding of fact which does not call for interference.

Learned counsel for the appellant refers to a Single Bench judgment of Orissa High Court in Harekrushna Mahakud v. Radhanath Mahakud and others, 2009 (77) AIC 886. The said judgment is not applicable for the reason that it relates to a case where the property was admittedly owned by a Joint Hindu Family.

I do not find that such findings of fact suffer from any illegality or irregularity giving rise to any substantial question of law.

Consequently, both the appeals are dismissed.

**(HEMANT GUPTA)**  
**JUDGE**

**JANUARY 8, 2016**  
‘D. Gulati’