

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

RSA No.482 of 2007 (O&M)

Date of decision:02.08.2016

Mukhtiar Singh (since deceased) through LRs & another

... Appellants

Vs.

Surjit Kaur and others

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.K.Singla, Advocate
for the appellants.

Mr. J.S.Brar, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

C.M.No.4375-C of 2010

The application is allowed, subject to all just exceptions. Legal representatives of appellant No.1, as mentioned in the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

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Appellant-plaintiffs are aggrieved of the findings rendered by the trial Court and upheld by the Lower Appellate Court vis-a-vis non-granting of declaration with regard to land measuring 1 kanal 13 marlas, more than what the declaration of 25 kanals 18 marlas, has been sought.

Mr. S.K.Singla, learned counsel appearing on behalf of the

appellant/plaintiffs submits that Smt. Bholi was owner having $\frac{1}{2}$ share in the property out of total holding measuring 103 kanals 15 marlas, i.e., 51 kanals 17 marlas. She had two daughters, namely, Bachan Kaur and Rattan Kaur. Bachan Kaur predeceased. Defendants No.1 to 8 are legal representatives of Bachan Kaur. Mutation bearing No.9841 dated 10.11.1975 (Ex.P11) qua $\frac{1}{2}$ share was entered in favour of Rattan Kaur. Appellant-plaintiffs, vide three sale deeds, Ex.P4 to Ex.P6, dated 21.02.1985, 09.11.1987 and 12.11.1987 purchased the land measuring 24 kanals 5 marlas, 18 kanals 0 marla, 6 kanals 4 marlas, i.e., total 48 kanals 9 marlas. Out of the aforementioned land, land measuring 20 kanals 8 marlas was sold to defendants No.11 to 14. LRs of Bachan Kaur, vide sale deeds dated 09.02.1996 and 11.04.1996, through Attorney, sold 8 kanals 10 marlas and 8 kanals 13 marlas out of 17 kanals 3 marlas to defendant No.18-Pritam Singh. He further submits that the aforementioned sale deeds were against the mutation as the same was not effected in favour of LRs. It is in this background of the matter, the suit, aforementioned was filed but the trial Court has erroneously not taken into consideration the aforementioned fact but granted the declaration qua share of Rattan Kaur, i.e., to the extent of 25 kanals 18 marlas, half of 51 kanals 17 marlas.

During the pendency of the appeal before the Lower Appellate Court, a compromise was arrived at between the legal representatives of Bachan Kaur and the suit qua defendant No.18, namely, Pritam Singh was withdrawn, thus, he submits that as per the terms and conditions of the compromise, LRs of Bachan Kaur had agreed that 10 kanals of land out of

share of Bachan Kaur would remain with the defendants No.1 to 8 and 15 kanals 18 marlas of the share of Bachan Kaur would go to the appellants but the aforementioned compromise has not been acknowledged by the Lower Appellate Court. He further submits that once the suit against defendant No.18, much less, the appeal had been withdrawn, there should not be any grievance against defendant No.18, when the compromise arrived at between the family members, i.e., LR's of Bachan Kaur and the plaintiffs, i.e., subsequent vendees deriving the share and interest from Rattan Kaur. This aspect of the matter requires to be considered by formulating the substantial questions of law as culled out in the memorandum of appeal.

Mr. J.S.Brar, learned counsel appearing on behalf of the respondents does not dispute the factum of withdrawal of the suit and appeal, but submits that the compromise as noticed by the trial Court and Lower Appellate Court has seriously affected the rights of defendant No.18 and therefore, rightly so, the Lower Appellate Court has not acknowledged the same as the terms and conditions of the compromise were against the interest of his client and thus, urges this Court for upholding the judgments and decrees under challenge before this Court.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below and of the view that findings rendered by the trial Court and affirmed by the Lower Appellate Court in not acknowledging the compromise are perfectly legal and justified as paragraph 7 of the Lower Appellate Court mentions that respondent No.18 had wrongly got executed the sale deeds of 17 kanals 6 marlas. The

compromise between the parties effecting the rights of third party cannot be permitted with the aid and permission of the Court, without his consent. It is in this background of the matter, the Lower Appellate Court did not grant the injunction. In case, appellants had actually arrived at compromise, they can settle the matter with the LRs of Bachan Kaur qua remaining share in the manner and mode they would like to but not as per the terms and conditions as recorded in the compromise Ex.C1.

There is another aspect of the matter. The mutation bearing No.9841 was in respect of land measuring 51 kanals 17 marlas, whereas, sale deed was for 25 kanals 18 marlas, thus, Rattan Kaur taking undue benefit of the same executed sale deeds in excess of what she had and, rightly so, the trial Court had granted declaration of 25 kanals 18 marlas.

For the forgoing reasons, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

August 02, 2016
savita

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No