

Regular Second Appeal No.3253 of 2011 (O&M) { 1 }

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3253 of 2011 (O&M)
Date of Decision: August 9th, 2016

Chander Bhan (since deceased) through L.Rs

...Appellant

Versus

Surender Kumar & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Arun Yadav, Advocate,
for the appellants.

Mr.Ajay Jain, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the dismissal of the suit seeking declaration with consequential relief of permanent injunction that he is owner in possession to the extent of 8 kanals of land, i.e., share of defendant No.2-Smt.Gindori as mentioned in Paragraph 1 of the plaint by virtue of a decree dated 21.7.1994 and challenge to the sale deed dated 2.8.1995 executed by defendant No.2 in favour of defendant No.1.

Mr.Arun Yadav, learned counsel for the appellant-plaintiff

submits that defendant No.2 had 1/12th share in the land measuring 157

kanals 13 marlas. Defendant No.1 executed a sale deed dated 11.11.1992 in respect of land measuring 8 kanals, which was challenged in a suit for pre-emption and the same was decreed vide judgment and decree dated 21.7.1994. However, due to inadvertence, the mutation in respect of aforementioned decree could not be recorded in the revenue record. Defendant No.2, vide sale deed dated 2.8.1995, sold another land measuring 8 kanals, which she could not have done as she had no right and title in the suit property. The trial Court dismissed the suit by holding that remedy, if any, for the plaintiff was to seek partition. The Lower Appellate Court, though dismissed the appeal, but returned the findings on issue No.1 by upholding his ownership qua 8 kanals of land by virtue of judgment and decree dated 21.7.1994. He further submits that his interest qua the aforementioned property, as referred to or reflected in the judgment and decree, be upheld/maintained.

Mr.Ajay Jain, learned counsel appearing on behalf of respondent No.1 submits that out of 157 kanals 13 marlas, land measuring 10 kanal 12 marlas was acquired and the entire joint holding came down to 147 kanals 1 marlas and as per 1/12th share of defendant No.2, she had ownership of 12 kanals 6 marlas. Meherbai, mother of Gindori, had also 1/20th share in the aforementioned land. She died on 31.8.1991 and 1/20th share came to be 1 kanal 4 marlas. This was

inherited by defendant No.2-Gindori, her brother Mahabir and L.Rs of other brother Chiranji. Mutation bearing No.1152 in respect of share of Mahabir was also entered in favour of the surviving legal heirs, i.e., collaterals.

He further submits that even Mahabir died on 16.2.1992 and, therefore, on acquiring the interest in the share of Meherbai and Mahabir, the share of defendant No.2-Gindori burgeoned to 17 kanals 8 marlas. The remedy, if any, for the plaintiff was to seek partition as the sale deed is also in respect of a share, thus, submits that there is no illegality and perversity in the judgments and decrees under challenge, much less no substantial question of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book.

The fact remains that the appellant-plaintiff had acquired the ownership in respect of land measuring 8 kanals described in the judgment and decree dated 21.7.1994. There is no dispute to the aforementioned fact. In my view, the appellant-plaintiff was ill-advised to seek declaration once he has already been declared as owner by virtue of the aforementioned sale deed. The sale deed dated 2.8.1995 reflects with regard to only share of defendant No.2, which, as noticed above, was not excess than what she had. The remedy, if any, for the appellant-

Regular Second Appeal No.3253 of 2011 (O&M) { 4 }

plaintiff for separate possession was to seek partition, but not the declaration as has been done.

In my view, the plaintiff has already been declared owner of land measuring 8 kanals as described in the judgment and decree, aforementioned, therefore, he could not have challenged the sale deed and, thus, the findings returned by the Courts below cannot be said to be erroneous and fallacious.

With the aforementioned observations, qua declaration of ownership of the appellant-plaintiff in respect of 8 kanals land, I do not intend to differ with the findings of the Courts below. No ground for interference is made out. No substantial question of law arises for determination.

Appeal stands dismissed.

August 9th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No