

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

RSA No.1872 of 2012 (O&M)

Date of decision : 26.10.2016

Jasbir Singh and another

...Appellants

Versus

Harjant Singh alias Harjit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Atul Lakhanpal, Sr. Advocate with
Mr. Arjun Lakhanpal, Advocate for appellants.

Mr. Premjit Kalia, Advocate for respondent No.1.

AMIT RAWAL, J. (Oral)

The appellant is a third party, who preferred appeal against the judgment and decree rendered by the trial Court, whereby suit of the respondent No.1-plaintiff for declaration to the effect that he is a co-sharer in the Zumla Mustarka malkan, in respect of land bearing Killa No.34/9/2, 10, 36/6, Khata Khatauni No.423/847 as per the jamabandi for the year 1995-96 with further declaration of correction of jamabandi, as per the provision of Section 45 of the Punjab Land Revenue Act for the year 1995-96 and 1990-1991, was decreed.

Mr. Atul Lakhanpal, learned Senior Counsel assisted by Mr. Arjun Lakhanpal, learned counsel appearing on behalf of appellants submits that appellants instituted the appeal against the aforementioned judgment

and decree by taking the leave of the Court as the defendant arrayed in the suit had already entered into an agreement to sell dated 17.04.2001 with the appellant vide which they had been put into possession. All these factors have not been taken into consideration. In fact decree has been obtained by playing fraud upon the defendant who had allegedly died. This aspect has not been taken care of by the Courts and appeal has been dismissed on the ground that agreement to sell has not been proved.

He submits that now during the pendency of the appeal, application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure has been moved to prove and place on record Annexures A-1 to A-8 to show the factum of the alleged fraud.

Per contra, Mr. Premjit Kalia, learned counsel appearing on behalf of respondent No.1 submits that defendant in the suit was proceeded ex parte. It was ex parte judgment and decree. Remedy for the appellant herein being third party to the suit was to file the suit as appeal was not maintainable. Agreement to sell has not been proved even did not confer title, much less, possession and urges this Court to affirm the findings under challenge rendered by the lower Appellate Court.

I have heard learned counsel for the parties and appraised the paper book and of the view that appellants were not to file the third party appeal, by obtaining the leave of the Court, but the remedy was to institute the suit owing to agreement to sell, aforementioned, as other documents sought to place on record by way of additional evidence would have established that fraud has been played upon them. Had appeal been filed accompanied with the application for additional evidence, it would have

enabled the lower Appellate Court to seek report as per the provision of Order 41 Rule 25 of Code of Civil Procedure.

I am of the view that it would be totally farcical exercise to continue and pursue the appeal aforementioned.

At this stage, Mr. Lakhanpal, learned counsel appearing on behalf of appellants submits that his client be granted the permission to file the civil suit by taking the aid of provision of Section 14 of the Limitation Act provided the findings rendered by the lower Appellate Court may not come into the way. I am in agreement with the aforementioned submission as remedy actually was to institute the suit.

Accordingly, liberty is granted to file the suit and findings rendered by the lower Appellate Court would not come into the way. In case suit is filed with application seeking benefit of provision of Section 14 of the Act, Court shall decide the same sympathetically uninfluenced with the findings rendered by the lower Appellate Court.

Accordingly, appeal stands disposed of.

26.10.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No