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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 10.05.2016

1. RSA-4839-2011 (O&M)

Mewa Singh and others

... Appellants

Versus

Sohan Singh and others

... Respondents

2. RSA-332-2012 (O&M)

Sohan Singh and others

... Appellants

Versus

Mewa Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Parminder Singh, Advocate
for the appellants (in RSA-4839-2011) and
for the respondent (in RSA-332-2012).

Mr. Vikram Singh, Advocate and
Mr. Abhinav Sood, Advocate
for the respondents (in RSA-4839-2011) and
for the appellants (in RSA-332-2012).

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two appeals bearing **RSA**
No.4839 of 2011 titled as **“Mewa Singh and others V/s Sohan Singh and**
others” filed at the instance of the defendant(s) and **RSA No.332 of 2012** titled

as “Sohan Singh and others V/s Mewa Singh and others”, filed at the instance of the plaintiff(s).

The plaintiff instituted a suit on 31.01.2004 challenging the *roznamcha* dated 23.10.1993 and mutation of a land measuring 16 kanals 18 marlas i.e. Hissedar in shamlat land on the premise that he was also entitled to half share on the analogy of the judgment and decree dated 16.12.1992, whereby the other land owned by Phulla Ram measuring 126 kanals 1 marla was given to Jai Singh. The plaintiff is none-else, but the son of Jai Singh. Jai Singh died on 04.09.1998 as the suit as noticed above was filed after almost 08 years of the mutation and the *roznamcha* claiming half share in 16 kanals 18 marlas. The trial Court on the basis of the oral and documentary evidence dismissed the suit, however, the lower Appellate Court did not grant the half share to the respondent-plaintiff by reversing the judgment and decree held that the aforementioned land i.e. Hissedar in shamlat land, would devolve upon all the legal heirs of Phulla Ram by way of natural succession. In these circumstances, the plaintiff has filed the appeal bearing **RSA No.332 of 2012** claiming half share.

Mr. Parminder Singh, learned counsel appearing on behalf of the appellant(s) submits that once, Jai Singh, during his life time, did not challenge the mutation for a period of five years, no explanation has come forth in filing the suit in the year 2004. In fact, the affidavit of all the LRs of Phulla Singh including that of Jai Singh, was submitted and on the basis of the same, the Revenue Authorities entered a *roznamcha* dated 23.10.1993 and subsequently mutation was also sanctioned. The defendant had been cultivating the land and this fact was in the knowledge of the plaintiff. All these facts have not been

noticed by the lower Appellate Court and thus, urges this Court to formulate the following substantial questions of law:-

1. Whether in view of the Section 80 of the Indian Evidence Act, the documents produced on record, part of judicial proceedings, are not admissible in the eyes of law?
2. Whether the appellant No.2 and 3 may not entitled from the protection being *bona fide* purchaser by way of Section 41 of the Transfer of Property Act?

Mr. Vikram Singh, Advocate and Mr. Abhinav Sood, learned counsel appearing on behalf of the respondent(s) submits that the lower Appellate Court has committed illegality and perversity in holding that Hissedar in shamlat land would be share of Phulla Ram in respect of Hissedar in shamlat land devolve upon all the legal heirs by way of natural succession as during his lifetime, he had suffered a decree dated 16.12.1992 giving half share in respect of total land measuring 126 kanals 1 marla. In the same manner, Jai Singh was entitled to half share in 16 kanals 18 marlas. He further submits that there is no limitation for claiming the title and on acquiring the knowledge, the suit was filed in the year 2004. No notice of transfer of the property was ever sent by the Revenue Authorities to all the siblings as children of Phulla Singh and on the basis of the affidavit, they did not carry any credence, in the *roznamcha*, thus, urges this Court for modification of the judgment and decree by granting the half share in the Hissedar in shamlat land.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is force and substance in the plea of Mr. Parminder Singh, for, the plaintiff has failed to lead any evidence to belie the

thumb impression of Jai Singh on the affidavit produced before the Revenue Authorities for effecting the *roznamcha* in respect of the aforementioned suit land. Jai Singh lived for two years, but did not challenge the same. He died on 04.09.1998, the suit has been filed in 2004. It is an agriculture land which has been cultivated by the defendant and this factum was in the knowledge of the respondent-plaintiff, yet slept over the matter for almost 8 years. All these facts have not been noticed by the lower Appellate Court and therefore, in my view, the view expressed by the trial Court is perfectly legal and justified and the plaintiff has miserably failed to prove the case.

For the foregoing reasons, the judgment and decree of the lower Appellate Court is hereby set aside and that of trial Court is restored. The substantial questions of law as noticed above are answered in favour of the appellant-defendant and against the respondent-plaintiff and accordingly, the appeal bearing RSA No.4839 of 2011 is allowed.

In view of the above, there is no force in the plea of the plaintiff in the appeal bearing RSA-332-2012 and accordingly, the same is dismissed.

With the aforesaid observations, appeal bearing RSA No.4839 of 2011 is allowed and appeal bearing RSA-332-2012 is dismissed.

10.05.2016
yogesh

(AMIT RAWAL)
JUDGE