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

**RSA-3248-2012 (O&M)
Date of decision : 09.08.2016**

Satnam Singh

... Appellant

Versus

Balkar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kuldip Sanwal, Advocate
for the appellants.

Mr. Anmol Partap Singh Mann, Advocate
for respondent Nos.1 to 4.

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)

CM-8613-C-2012

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the LRs of respondent Nos.2 & 5 are brought on record for the purpose of prosecuting the appeal.

CM stands disposed of.

RSA-3248-2012

The appellant-plaintiff is aggrieved of the judgment and decree of the lower Appellate Court, whereby the suit seeking possession as owner of the land measuring 34 kanals 10 marlas being 4/6th share of plaintiff

No.1, 1/6th share of plaintiff No.2 and 1/6th share of plaintiff Nos.3 to 9 in respect of the suit property mentioned in the plaint, has been dismissed by the lower Appellate Court, in essence, the judgment and decree of the trial Court decreeing the suit has been set aside.

Mr. Kuldip Sanwal, learned counsel appearing on behalf of the appellant-plaintiff submits that the suit aforementioned was filed in the year 1997 seeking possession that Dalip Singh S/o Khushal Singh in lieu of the land left in Pakistan was allotted land in Village Budhobarkat, Tehsil Dasuya, District Hoshiarpur. The respondents-defendants were none else, but the encroachers upon the aforementioned land. The defendants set up a title i.e a sale deed 14.07.1965 (Ex. D4) alleged to have been purchased from Dalip Singh son of Khushal Singh. The trial Court after examining the oral and documentary evidence found that Dalip Singh could not execute the sale deed as he was not alive on that date and also the sale deed was not registered. However, the lower Appellate Court being the last Court of fact and law after examining the evidence reversed the findings of the trial Court by holding that the sale deed was registered, but the fact remains that it has been proved that Dalip Singh was not alive on that date. All these facts have ignored by the lower Appellate Court. He further submit that the appellant-plaintiff produced on record of the death certificate of Dalip Singh (Ex.P-1), report of Civil Surgeon, Gurdaspur (Ex. P2), copy of Istemal Hakuk (Ex.P3) and the other documents i.e. Parcha allotment (Ex.P.10) to show that land was allotted to Dalip Singh. All these aspects have not be noticed by the lower Appellate Court, thus, the lower Appellate Court abdicated in discharging the obligation as enshrined under Section 96 of the Act. The

document i.e. Parcha allotment (Ex.P-10) was 30 years' old and therefore, it did not require any mode of proof and was *per se* admissible in evidence. He further submits that as per death record of Chowkidar, Dalip Singh died in the year 1955, thus, urges this court for formulation of the substantial question of law as culled out in the memorandum of appeal.

Mr. Anmol Partap Singh Maan, learned Counsel appearing on behalf of respondent Nos.1 to 4 submits that the findings rendered by the trial Court viz-a-viz non-registration of the sale deed is preposterous as it was a registered sale deed. The suit simpliciter for possession was not maintainable in the absence of relief of declaration. The factum of the death of Dalip Singh has not been proved in accordance with law and the appellant-plaintiff could not have taken the aid of Section 19 of the Indian Evidence Act. The land purchased by the defendants was of Dalip Singh, but not one from whom the appellant-plaintiff is linking the relation/lineage, thus, the findings rendered by the lower Appellate Court was based upon preponderance of the evidence and does not warrant interference and prays for dismissal of the appeal.

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

It is a matter of record that the sale deed aforementioned is a registered document. No relief of declaration has been sought. The appellant-plaintiff has not even taken the aid of an Expert to examine the signatures of the Dalip Singh whether it was Dalip Singh son of Khushal Singh, predecessor-in-interest or someone else. The factum of death has also not been proved on record, much less, there is no compliance of the

provisions of Section 50 of the Indian Evidence Act. All these aspects facts have been noticed by the lower Appellate Court while reversing the findings of the trial Court. The suit in the absence of the relief of declaration was not maintainable. In my view, the finding of the lower Appellate Court is legal and justified.

For the foregoing reasons, I do not intend to differ with the findings of the lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and the appeal, is, resultantly, dismissed.

09.08.2016
yogesh

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No