

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

RSA No.2878 of 2013
Date of decision : 15.09.2016

Ram Pal

...Appellant

Versus

Ram Dhari and another

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. R.N. Lohan, Advocate for appellants.

Mr. Deepak Kundu, Advocate for respondents.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby suit for possession of a plot/gair mumkin bada comprised in khewat No.595/551, Khata No.613, Khasra No.753/10 total measuring 5 marlas situated in the revenue estate/abadi of village Dhigana, Tehsil and District Jind, as per the jamabandi for the year 2004-05 with a consequential relief of mandatory injunction and permanent injunction, has been dismissed.

Mr. R.N. Lohan, learned counsel appearing on behalf of appellant-plaintiff submits that suit was filed on the basis of the title as the defendants encroached the said plot. As per the policy of the Haryana Government, landless person were allotted five marlas residential plots by

the Gram Panchayat of the concerned village free of cost. The aforementioned plots were allotted to the father of the plaintiff and after his death, suit land as per the family settlement, had come to the share of the plaintiff. Three months before the filing of the suit, defendants had encroached on the land and suit accordingly, aforementioned, was filed. The plea of the respondent having purchased the property vide registered sale deed dated 24.12.1979 from the brother of the plaintiff namely Rameshwar was neither here nor there as the father of the plaintiff and brother died intestate. He could not have sold the property in entirety and thus submits that Courts below have committed illegality and perversity in dismissing the suit. He further submits that jamabandi brought on record leaves no manner of doubt that the property is in the ownership of the father of the appellant-plaintiff. The defendants have failed to prove the sale deed Ex.D2 and urges this Court for setting aside of the judgment and decree under challenge.

Mr. Deepak Kundu, learned counsel appearing on behalf of respondents-defendants submits that sale deed aforementioned was challenged by the plaintiff in Civil Suit bearing No.384 dated 26.07.2010 and the same has been dismissed. Once the defendants have been held to be owner, the plaintiff cannot seek the possession, and thus urges this Court for affirmation of the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that as per the judgment and decree dated 18.05.2012 rendered in Civil Suit bearing No.384 dated 26.07.2010, once the plaintiff seeking possession on the basis of the title, have not been proved to be owner rightly so, the Courts below have declined the relief of

possession.

For the foregoing reasons, I do not intend to differ with the concurrent findings of facts and law.

Accordingly, present appeal is dismissed.

15.09.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No