

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

**RSA No.3127 of 2013 (O&M)
Date of decision:25.10.2016**

Majinder Singh

... Appellant

Vs.

Sarbjit Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Krishan Lal Verma, Advocate
for the appellant.

Mr. Malkeet Singh, Advocate
for respondent No.1.

AMIT RAWAL J.

The appellant-plaintiff is aggrieved of the concurrent findings of facts and law, whereby, suit for declaration to the effect that he is owner in possession to the extent of 2/9th share of the property described in head note of the suit; with a further declaration that note bearing No.9887 regarding the Tabdil Malkiat in favour of defendant No.1 be declared illegal, null and void and set aside and also prayed that judgment and decree dated 5.11.2003 be declared illegal, null and void and set aside with an alternative relief for joint possession as owner to the extent of 2/9th share of the land, has been dismissed.

The suit was filed seeking aforementioned relief on the premise that plaintiff was co-sharer in possession of the suit property to the extent of 2/9th share. The entry in the revenue record was the result of collusion with the revenue authorities. On noticing the factum of the entry in the month of

May, 20006, the plaintiff approached the defendants for correction in the jamabandi. When they refused to do the same, the aforementioned suit was filed. In support of the case, the plaintiff had brought on record documents Ex.P1 and Ex.P2 and duly sworn the affidavit Ex.PW1/A. The judgment and decree aforementioned was challenged on the ground that he was not properly represented in the civil suit bearing No.109 of 1996, therefore, the judgment and decree dated 05.11.2003 was not binding as he was minor at that time which was proved through Ex.P2.

On the contrary, respondent-defendants contested by alleging that the plaintiff was co-owner in possession of the suit property. In fact, the suit had been filed with malafide intention by the defendant in collusion with his mother Deesho- defendant No.3 to undo the previous litigation titled as Sarabjit Kaur vs. Gurbachan Singh bearing civil suit No.109 of 1996 instituted on 07.03.1996, dismissed on 5.11.2003 as well as an appeal filed by defendant against the judgment and decree dated 05.11.2003 bearing RCA No.50 of 2003 titled as Sarabjit Kaur vs. Gurbachan Singh, decided on 23.11.2004, vide which the suit of defendant was decreed and judgment of trial Court was set aside, whereby, the defendant was declared owner in possession of the suit property and mutation bearing No.9887 was validly sanctioned in her favour.

It was also averred that said Bachint Singh executed a valid registered Will dated 19.08.1984 in favour of Gurbachan Singh, defendant No.2 to the extent of 1/3rd share, Smt. Deesho, defendant No.3 to the extent of 1/3rd share and remaining 1/3rd share was given to defendant No.1 Sarabjit Kaur but defendant No.3 fraudulently got entered the mutation with regard

to estate of Bachint Singh bearing No.7798 on the basis of an un-registered Will dated 21.10.1985. It is in this background of the matter, the suit aforementioned was filed which was decreed by the Lower Appellate Court.

Mr. Krishan Lal, learned counsel appearing on behalf of the appellant-plaintiff submits that Bachint Singh alias Bawa Singh, executed a Will dated 21.10.1985 in favour of his real nephew Manjinder Singh, son of Gurbachan Singh, the present appellant out of love and affection and services rendered by him. The mutation was duly sanctioned in favour of the plaintiff which was entered in the jamabandi for the year 1997-98, therefore, the appellant became owner of the said land to the extent of 2/9th share in the entire land of other co-sharer.

He further submits that Sarbjit Kaur, respondent No.1 was neither having any right or title nor ever remained in possession of the land in dispute left by Sh. Bachint Singh @ Bawa Singh. Manjinder Singh, appellant was minor, so 'Tabdil Malqiat' obtained by her regarding the land was without the knowledge and, thus, she filed a suit for declaration against Gurbachan Singh and others which was dismissed on 5.11.2003. The appellant was sued through his father Gurbachan Singh, who died during the pendency of the said suit as he had no notice regarding filing of any appeal by Sarabjit Kaur, thus, all the proceedings held in appeal were illegal, void and having no effect on the rights of the appellant, who was minor at that point of time, therefore, the suit was filed through his mother Gurdish Kaur and thus, there was no compliance of the provisions of Order 32 Rule 3 of Code of Civil Procedure for appointment of guardian of Manjinder Singh before the Lower Appellate Court.

He further submits that an application under Order 41 Rule 27 read with Section 151 CPC for leading additional evidence was moved but the same remained un-decided. The Lower Appellate Court did not decide the aforementioned application and therefore, the matter requires to be remanded back and thus, urges this Court for setting aside the findings under challenge.

Mr. Malkeet Singh, learned counsel appearing on behalf of respondent No.1 submits that the submission with regard non-decision of the application purported to have been filed under Order 41 Rule 27 CPC is not only misconceived but devoid of merit as the same has been decided on 19.02.2013, copy of which has been handed over to this Court during the course of arguments. There is no challenge to the aforementioned order. On merits, he submits that both the Courts below rendered the findings after appreciating the oral and documentary evidence. The suit had been filed in collusion with defendant No.3, who had played an active role in getting the mutation sanctioned on the basis of the judgment and decree dated 24.11.2004. The interest of the appellant was protected and thus, urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below.

It is a matter of record that suit bearing No.109 of 1996 filed by defendant No.1 seeking ownership in possession of the suit land to the extent of 1/3rd share though had been dismissed by the trial Court, vide judgment and decree dated 05.11.2003 but the same was decreed by the Lower Appellate Court, vide judgment and decree dated 24.11.2004 which

has not been challenged, which entailed into dismissal of the suit aforementioned. Thus, pleadings in the suit, much less, prayer made was hopelessly vague in the absence of the challenge to the said judgment and decree, therefore, the suit could not have been proceeded further. Neither copy of the plaint nor copy of the judgment and decree dated 05.11.2003 has been produced on record.

In the previous suit, plaintiff-Manjinder was represented by his mother Desho as *ad litem*, meaning thereby the plaintiff had been represented by his mother in the civil suit. The appellant has not been able to make out a case that any prejudice had been caused and could not protect his interest by his mother. As noticed above, Copy of the plaint of civil suit has been placed on record, therefore, the Court could not form an opinion as sought to be projected.

For the reasons aforementioned, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

October 25, 2016

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No