

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

RSA No.2487 of 2016 (O&M)

Date of decision : 17.11.2016

Manjit Kaur and others

...Appellants

Versus

Samit Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Ms. Sarika Gupta, Advocate for the appellants.

AMIT RAWAL, J. (Oral)

The appellants-plaintiffs are aggrieved of the concurrent findings of fact, whereby suit seeking declaration that wife and children of appellants-plaintiffs are in exclusive owner in possession of land measuring 21 kanals 18 ½ marlas comprised in Khewat/Khatauni No.30/34, Khasra No.7//18/5 (0-4), 14//8/2 (2-12), 9/1 (7-2), 12/1/2 (1-4), 13 (7-18), 18/1 (0-15), 57/2 (0-1) Kite 7 total measuring 19 kanals 16 marla and Khewat Khatoni No.31/35, Khasra No.14//8/1 (2-9) to the extent of 85/98 shares measuring 2 kanals 2 ½ marla situated at Village Rora H.B. No.369, Tehsil Kharar District Mohali, as per the jamabandi for the year 2005-06, by challenging the sale deed dated 20.11.2008 executed by defendant No.2 in favour of defendant No.1 on the premise that there is already a charge created on the property vide order dated 01.03.2007, has been dismissed by

both the Courts below.

Ms. Sarika Gupta, learned counsel appearing on behalf of appellants-plaintiffs submits that appellants-plaintiffs are depressed wife and children of defendant No.2-Tejinder Singh who had been living separately and have been indulging into vices. It is in this backdrop of the matter, civil suit seeking maintenance was filed, whereby matter was compromised and following order was passed:-

“Present:- Counsel for the parties.

Statements of the parties recorded. Respondent in his statement has agreed to bear the school expenses of the children alongwith other expenses of household. In addition to it, he has agreed to give Rs.1000/- PM in cash to petitioner no.1 to meet misc. expenses and has no objection if charge be created on his land. In view of the statement of the respondent, petitioner has withdrawn the present pauper application after the creation of the charge. In view of the above statement, the pauper application stands withdrawn as compromised in the spirit of the statement of the respondent on creation of charge on the suit property. Respondent shall remain bound by his statement. Entry regarding charge be made in the revenue record. File be consigned to the record room.

Announced.

1.3.2007

Sd/- Civil Judge (Jr. Divn.)

Kharar”

The aforementioned order was passed on the basis of statement of the parties. Sale deed is of the year 2008. The factum of the charge was reflected in the jamabandi. However, defence taken in the written statement but no documentary evidence has been placed on record. Both the

Courts below have appreciated the facts. Another ground for challenging the sale deed was that it was sold for an paltry amount though market value of the same is more than Rs.1 crore. All these factors have not been taken care of, thus, there is gross illegality and perversity.

I have heard learned counsel for appellants-plaintiffs and appraised the paper book and of the view that in case the order dated 01.03.2007 has not been vacated and holds, even if property has exchanged hands, charge will continue to remain with the same condition, as if it was mortgaged with the financial institution. Appellants-plaintiffs shall not be entitled to seek correction of the entry with regard to the vacation of the charge, in the absence of the order, but in case there is order of the Court, he shall be at liberty to seek remedy, in accordance with law but cannot challenge the sale deed as property at the hands of Tejinder Singh was self-acquired property.

I do not intend to differ with the findings rendered by both the Courts below based upon the appreciation of oral and documentary evidence.

With the aforementioned observations while upholding the findings, RSA stands disposed of.

17.11.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No