

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

**1. RA-RS-68-C-2016 in
RSA No. 4562 of 2012
Date of Decision: 26.05.2016**

Smt. KrishnaAppellant
vs.

Smt. Jiwani and othersRespondents

**2. RA-RS-69-C-2016 in
RSA No. 4673 of 2012**

Smt. KrishnaAppellant

vs.

Smt. Jiwani and othersRespondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. Sandeep Parkash Charar, Advocate,
for the applicant-appellant.

AMOL RATTAN SINGH, J. (ORAL)

By these applications, the applicant-appellant (in both applications), seeks review of the order of this Court (co-ordinate Bench) dated 19.12.2012, by which these two appeals, as also another connected appeal filed by the same appellant, were dismissed in *limine*.

The operative part of the said order is as follows:-

*"Counsel for the appellant
contended that oral sale in the year 1951 in*

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favour of Ratti Ram predecessor in interest of the respondents was not a valid sale, as there was no registered sale deed regarding the said sale. The contention cannot be accepted because Section 54 of the Transfer of Property Act, requiring compulsory registration of sale deed, came into force in Punjab w.e.f. 01.04.1955 as noticed by the lower Appellate Court. Consequently, sale made on 28.09.51 for which mutation was sanctioned on 29.09.1951 in favour of Ratti Ram was valid even if there was no registered sale deed regarding the said sale.

For the reasons aforesaid, I find that Courts below have rightly concluded that vendors of the appellant did not have any share, right, title or interest in the suit land and therefore, the plaintiff/appellant also did not derive any share, right, title or interest in the suit land by virtue of the sale deeds in her favour. Resultantly there is no merit in these appeals. No question of law, much less substantial question of law, arises for adjudication in these appeals. The appeals are, therefore, dismissed in limine.”

2. The three appeals that were filed arose essentially from one suit filed by the present applicant-appellant seeking permanent injunction restraining the defendants from interfering in her allegedly peaceful possession of the suit land, and another suit filed by defendants No. 1 to 5 in the suit filed by the plaintiff.

By that suit the plaintiffs therein (aforesaid defendants No. 1 to 5

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in the present appellants' suit), sought a decree of declaration that they be declared to be owners in possession of the said suit land and further sought a relief of permanent injunction against the present appellant as also 28 other persons arrayed as defendants in the suit of those persons. They had further sought a declaration that the sale deeds dated 17.06.1988 and 15.09.1989, executed by one Bhagwat Sarup, in favour of the vendors of the present appellant, i.e. Vikas Jain and Jyotisheel, be declared to be null and void and still further, that the sale deeds dated 30.12.1996 and 05.11.1997, in favour of the present appellant, executed by the aforesaid Vikas Jain and Jyotisheel, be also declared to be null and void, along with the mutations corresponding to the aforesaid four sale deeds. The suit of the present applicant-appellant (Civil Suit No. 589 of 2001) was dismissed holding that she was not entitled to a decree of permanent injunction in her favour, she not having been able to prove her possession of the suit property.

3. The following judgment of the learned Sub-Judge (Jr. Division), Rohtak dated 12.02.2008, can be referred to with regard to the said finding:-

"The plaintiff has not challenged sale deed in favour of father of defendants No. 1 to 5 but case is that she is owner in possession of the suit property and defendant may kindly be restrained to interfere in the peaceful possession of plaintiff over suit

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property. Plaintiff has to prove his possession over the suit property. Plaintiff has failed to prove his possession over the suit property. From the perusal of jamabandi for the year 1997-98 Ex. P-9 shows that Rati Ram, son of Thakaria, is to be shown in the column of the possession, meaning thereby that Vikas son of Kulbhushan, vendor of plaintiff was not in possession of land falling in khasra No. 1559 and Suba son of Birkha was in possession of land falling in khasra No. 1560.

The same position is to be shown in jamabandi for the year 2002-03 Ex. P-10. It is nowhere proved on the file that vendor of plaintiff ever cultivated the land in question. It is nowhere mentioned in sale deed dated 05.11.1997 that possession of which specific portion of the land was given. It is mentioned in the sale deed executed by Jyotisheel etc. that they were in possession of the suit land in dispute. Same is the situation of sale deed dated 30.12.1996, executed by Vikas Jain in favour of plaintiff. When vendors were not in possession of the land in question, then how they delivered the same to the plaintiff, is nowhere clear. It is bounded duty of the plaintiff to show that vendors were in exclusive possession of suit property and they delivered the same to her in this manner, plaintiff has failed to prove her possession over the suit property. In the considered view of this Court, plaintiff is not entitled for decree

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for permanent injunction."

4. Similarly the First Appellate Court also held as follows with regard to the issue of the present appellant, Smt. Krishna not being in possession of the suit land.

"Though plaintiff Krishna has sought the relief of permanent injunction to restrain the defendants from interfering in her possession over the suit land as comprised in khasras No. 1559 and 1560 but it is pertinent to mention here that she claims her ownership rights as well as possession over the above-said suit land by virtue of the aforesaid impugned sale-deeds but as discussed earlier, the above-said sale deeds have been held to be illegal and void. In these circumstances, it is explicit that the vendors of the plaintiff could not have transferred the possession of the suit land in her favour as they were not having any title in respect of the same. Moreover, the entries of the revenue record Exs. P9 and P-10, i.e. jamabandis pertaining to the years 1997-1998 and 2002-2003, also do not support her claim regarding her possession over the above-said suit land because neither her name nor the names of the vendors, Vikas and Jyotisheel etc., find mentioned therein in the relevant column as meant for denoting the name of the cultivator. Therefore, it has to be held that the plaintiff has failed to prove her possession over the suit land so as to enable her to seek the relief of injunction in Civil Suit

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No. 589.

Though the entries of the revenue record Exhibits P9 and P1- do not show the defendants to be in possession over the suit land but the fact remains that in view of the afore-discussed observation, it is explicit that defendants No. 1 to 5 are co-sharers in this land to the extent of the share as purchased by their father Ram Singh from above-said Rati Ram, vide sale-deed Exhibit D-1 and there is nothing on the record to show that the suit land has ever been partitioned amongst its co-sharers. Therefore, it has to be held that they (defendants No. 1 to 5) have a right of possession over the suit land as co-sharers and are entitled to seek injunction to protect the same.

In the light of all the afore-discussed facts and circumstances, this Court of the considered opinion that the findings as returned by learned trial Court on issues No. 2 to 4 cannot be upheld and the same deserve to be set aside. Resultantly, the same are hereby set aside. However, the findings, as returned by learned trial Court on issue No. 1 and 5 to 7, do not suffer from any infirmity, illegality or irregularity and therefore, the same do not call for any interference by this Court and hence, the same are hereby affirmed."

5. Learned counsel for the applicant-appellant submits that in the sale deeds executed by the aforesaid Vikas Jain and Jyotisheel in favour of the appellant, there was a recital contained

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therein, that delivery of the suit land had been handed over to the appellant. Further, PW-2 Rameshwar and PW-4 Om Parkash also in their oral testimonies, had testified that the appellant-plaintiff was in possession over the suit land. However, when confronted with the aforesaid findings of the learned Courts below with regard to the revenue record not even showing the vendors of the appellant to be in possession of the suit property by virtue of which they could have possibly transferred possession to the appellant, learned counsel only reiterated the testimonies of the two witnesses.

Hence, even though the defendants were not shown to be in possession of the suit property and in fact Ratti Ram, i.e. the vendor of one of the defendants, i.e. Ram Singh, was shown to be in possession of the suit land, I do not see how that finding of fact can be disturbed by this Court, especially in a review application.

6. Other than that, as already recorded in the order dated 25.05.2016, the learned Courts below eventually decreed the suit of defendants No. 1 to 5 (i.e. respondents/predecessors-in-interest of respondents No. 1 to 36 herein), on the ground that the oral sale by the original owner, aforesaid Bhagwat Sarup, in favour of Ratti Ram in the year 1951 was a valid sale, in view of the fact that Section 54 of the Transfer of Property Act, 1882, requiring compulsory registration of a sale of tangible immovable

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property above the value of Rs. 100/-, came into effect in the State of Punjab (including then the State of Haryana) only w.e.f. 01.04.1955. This was so held by the Courts below by citing a judgment of this Court in **Sant Ram and another** vs. **Kulwant Singh and another** 2009 (3) PLR 497, in which it was held to be so.

Learned counsel for the appellant has not been able to show anything to the contrary by way of a notification etc. to enable this Court to hold that the aforesaid fact with regard to Section 54 of the Transfer of Property Act, 1882, having come into effect only w.e.f. 01.04.1955, is an incorrect finding.

No other point has been argued.

Consequently, I find no error patent on the face of the record, in the order of this Court dated 19.12.2012, and such, this Court having duly considered the contention raised, no ground for review is made out. These applications are, accordingly, dismissed *in limine*.

**CM No. 6918-C-2016 in RA-RS-68-C- of 2016 and
CM No. 6927-C-2016 in RA-RS-69-C-2016**

Though the issue of condonation of delay is now rendered academic, the review applications having been dismissed *in limine*, as above, however, despite the fact that detailed reasons have been given by the applicant seeking condonation of a delay of 1190 days in filing the review application, I see no reason to condone such a long delay.

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Hence, the review applications are dismissed, not only on the ground given above in the review applications, but also on the grounds of delay in filing the applications.

**(AMOL RATTAN SINGH)
JUDGE**

May 26, 2016
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