

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.3512 of 2015

Date of decision:24.5.2017

Dalip Singh @ Deep Chand

...Appellant

Versus

Prem Devi and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.R.S.Sheoran, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful plaintiff is in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for possession was dismissed by the learned trial court, vide its impugned judgment and decree dated 26.11.2012 and his first appeal also came to be dismissed by the learned District Judge, vide its impugned judgment and decree dated 28.1.2015.

Brief facts of the case, as noticed by the learned first appellate Court in paras 2 and 3 of the impugned judgment, are that present appellant-plaintiff namely Dalip Singh alias Deep Chand (hereinafter referred as the 'plaintiff') filed a suit for possession with consequential relief of permanent injunction against the respondents-defendants (hereinafter referred as the 'defendants') claiming that Phalgun, father of the plaintiff and defendant No.2 was the owner in possession of a residential plot comprised in Khewat No.242/228, Khatoni No.311, Khasra No.844 measuring 4 kanals 0 marla, situated at village Devrara, Tehsil Tosham,

District Bhiwani and after his death, the said property and other agricultural land was inherited by the plaintiff and defendant no.2 in equal shares. It was further pleaded that in this way, the interest in the land on the death intestate devolved upon the plaintiff being the co-heir as specified in class Ist of the Schedule and the plaintiff has preferential right to acquire the interest proposed to be transferred by any of the co-heirs under Section 22 of the Hindu Succession Act. It was further pleaded that out of the aforesaid land, defendant No.2 had sold the land measuring 1 kanal 0 marla i.e. 1/4th share to defendant No.1 vide sale deed dated 29.3.2007 for a sale consideration of ₹61,000/- and he (defendant no.2) had also delivered the possession of the specific portion to defendant No.1. It was further pleaded that plaintiff had earlier filed a suit for permanent injunction against the defendants for restraining him from raising any construction over specific portion of the suit land but defendant no.1 succeeded in constructing a residential house over a specific portion of the aforesaid land, so the plaintiff was not bound by any improvement made by defendant No.1. It was further pleaded that no notice prior to sale of the land in dispute was given to the plaintiff and the sale was secret one. It was further pleaded that had defendant No.2 expressed his interest to transfer the land in question, the plaintiff might have offered a highest consideration to him. It was further pleaded that on having knowledge of the sale of the land in dispute by defendant No.2 to defendant No.1, the plaintiff offered the sale consideration of ₹61,000/- alongwith requisite stamp and registration charges and other expenses to defendant No.1 as he had right to acquire the suit land under Section 22 of the Hindu Succession Act, but defendant No.1 flatly turned down his

request and threatened him that he would alienate the suit property to other persons other than the plaintiff by way of sale, exchange, mortgage and releasing etc. It was further pleaded that if defendant No.1 succeeded in his illegal design, he would suffer irreparable loss which would not be compensated in terms of money. On these allegations, the plaintiff filed the present suit for possession under Section 22 of the Hindu Succession Act, 1956 of the residential land as detailed in head note of the plaint on payment of ₹61,000/- alongwith stamp and registration charges by the plaintiff who had preferential right to acquire the land in dispute transferred by defendant No.2 in favour of defendant No.1 for a sale consideration of ₹61,000/- vide sale deed dated 29.3.2007 registered in the office of Joint Sub Registrar, Bhiwani with consequential relief of permanent injunction restraining defendant No.1 from alienating the land in dispute by way of sale, gift, mortgage, release etc. other than the plaintiff.

Having been put to notice, defendants appeared and filed their contesting written statement. No replication was filed by the plaintiff. On completion of pleadings of the parties, learned trial Court framed the following issues:-

- (1) Whether the plaintiff has preferential right to acquire the suit land in view of Section 22 of the Hindu Succession Act, 1956 in affirmative? OPP.
- (2) If issue No.1 is proved, whether the plaintiff is entitled to the decree of possession of the suit land as prayed for? OPP.
- (3) Whether the plaintiff is entitled to the relief of permanent injunction as prayed? OPP.
- (4) Whether this court has jurisdiction to entertain and try the present suit? OPP.
- (5) Whether the suit of the plaintiff is not maintainable in the

present form? OPD.

(6) Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has failed to prove his case. Accordingly, suit for possession was dismissed, vide impugned judgment and decree dated 26.11.2012. Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 28.1.2015. Hence this second appeal, at the hands of the plaintiff.

Heard learned counsel for the appellant.

It is a matter of record that the plaintiff-appellant filed a suit for possession. Sale-deed 29.3.2007 for a consideration of Rs.61,000/- executed by defendant No.2 in favour of defendant No.1 was not at all challenged by the plaintiff. The entire case of the plaintiff was based on the fact that he had preferential right over defendant No.1, in terms of the provisions of law contained in Section 22 of the Hindu Succession Act. It was not pleaded or argued case on behalf of the appellant that his brother Ram Kumar was issueless because of which he might be having a preferential right of succession.

It is also not in dispute that neither defendant No.2 himself nor any of his children challenged the sale-deed dated 29.3.2007. Having said that, this Court feels no hesitation to conclude that once the plaintiff-appellant did not challenge the validity of sale-deed Ex.P4, he had no case either on facts or in law and he was bound to fail. That is what has been rightly held by both the learned courts below, thus, the impugned judgments

and decrees deserve to be upheld.

It is the settled proposition of law that plaintiff is supposed to prove his pleaded case by leading cogent and convincing evidence. He has to stand on his own legs. Suit of the plaintiff, in the absence of any cogent evidence, cannot be decreed on the alleged weakness of the case of defendant. Once the plaintiff did not challenge the above-said sale-deed for the reasons best known to him, his suit for possession could not have been decreed. Under these peculiar facts and circumstances of the case, it can be safely concluded that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 15 and 16 of its impugned judgment, which deserve to be noticed here, read as under:-

“The plaintiff himself has come in witness box as PW1 Dalip Singh alias Deep Chand and in his sworn affidavit, he has reiterated all the averments as pleaded in the plaint. In his cross-examination, he stated that he as well as Ram Kumar (defendant no.2) had been residing separately for the last 15 years. His son Yogesh, aged 35 years, has been residing separately alongwith his family. He further stated that Yogesh was separated from him at about five years back and he has constructed his house in the suit land and residing therein. He stated in cross-examination that he did not remember whether he as well as his brother Ram Kumar separated in the year of 1975. He admitted that he as well as Ram Kumar having their

*separate houses. He further admitted in cross-examination that defendant no.1 Prem Devi has constructed one room and boundary wall over the suit land. If the entire cross-examination of plaintiff PW1 Dalip Singh @ Deep Chand is appreciated, he has admitted that he as well as defendant no.2 Ram Kumar (both brothers) have separated themselves at about 15 years back and they have been separately residing. It is also established that Yogesh son of the present plaintiff has also been residing separately for the last five years by constructing his house in the disputed property. It is established from this evidence that the plaintiff and defendant no.2 were not jointly owners of the suit property but the suit property sold away by defendant no.2 in favour of defendant no.1 had fallen into the share of defendant no.2 after usual family partition and defendant no.2 having independent right, transferred his share in favour of third party. Therefore, the plaintiff co-sharer is not entitled to claim his preferential right over the suit land under Section 22 of the Act of 1956. The similar view has been taken by Hon'ble Gauhati High Court in judgment **Haren Sarma's case(supra)** and Hon'ble Orissa High Court in **Benirani Ray & others' case(supra)** referred on behalf of the respondent-defendant no.1. Therefore, when the suit property has not been established as joint with the plaintiff and they were having separate possession by mutual partition for the last many years, preferential right of the plaintiff is not attracted in view of Section 22 of the above referred Act.*

In this case, plaintiff Dalip Singh alias Deep Chand and defendant no.2 Ram Kumar are real brothers. Defendant no.2 has filed written statement and in para no.3 of preliminary objections, he has specifically pleaded that answering defendant was in need of money and he asked all the neighbours including the plaintiff to purchase the land as he was in dire need of money at that time. Agreement had taken place prior to the sale and he waited sufficiently but the

*plaintiff was not willing to purchase and therefore, the suit property was sold to defendant no.1. Thereafter defendant no.1 started improvement on the suit land and constructed a residential house. The family partition had already taken place and son of the plaintiff has constructed a house seven years ago in the allotted share of the plaintiff and the land was already mutually partitioned between Dalip Singh and Ram Kumar. These contentions made by defendant no.2 in written statement have almost admitted in cross-examination by plaintiff himself when examined in the court as PW1 Dalip Singh alias Deep Chand. Therefore, the plaintiff was having knowledge of the sale deed from the very beginning and a aggrieved legal heir who wants to seek preferential right have limitation to challenge such sale deed within one year as the same would govern by Article 97 of the Limitation, 1963 and present suit was filed by the plaintiff on 14.6.2008 beyond the period of limitation of one year and hence, the learned Lower Court has rightly dismissed the suit being time barred making reliance on judgment **Surender Kumar Jain Versus Madhu Gupta and another, 2010 (1) Latest Judicial Reports, 709 (P&H)**. In view of these findings, the judgments cited on behalf of the appellant-plaintiff claiming period of limitation of three years from the date of knowledge, **Gunabai's case(supra)** and **Tarubai Damu Sawant's case (supra)** have no bearing on the facts of the present case. Therefore, findings of learned Lower Court on issue no.1 are set aside and this issue is decided against the plaintiff that he has no preferential right to acquire the suit land in view of Section 22 of Hindu Succession Act, 1956 and cross-objections of the respondent-defendant no.1 are liable to be accepted. The findings of learned Lower Court on remaining issues are well reasoned and the same are hereby affirmed.”*

During the course of arguments, learned counsel for the

appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in *Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286* and *Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179*.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

24.5.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No