

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

RSA No.5365 of 2016 (O&M)
Date of Decision: May 12, 2017

Gulab Singh

..Appellant(s)

Versus

Joginder Singh & Ors.

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rajender Helwa, Advocate
for the appellant.

ANITA CHAUDHRY, J.

This is the defendant's second appeal aggrieved by the judgment passed by both the Courts below.

Joginder Singh had filed a suit pleading that he had purchased a property from Ram Nath on 25.03.1969, which was registered on 02.04.1969. The property was sold to Lal Singh, father of the plaintiff. It was pleaded that the plaintiff along with his brother (since dead) had inherited the property after the death of their father and the plaintiff was a co-sharer. It was pleaded that the father of defendants no.1 to 3 took the property for use as a licensee for tethering the cattle and constructed the wall on the Northern and Western side so that it was not trespassed and they were now threatening to alienate the property. A decree for possession was prayed.

Defendants no.1 & 2 admitted that the property was situated within the Abadi Deh but denied the dimensions. It was pleaded that there was no sale deed and if it was then it was not binding upon their rights as the suit land was ancestral and the sale deed had been kept secret from Ram Nath and had been obtained by fraud and had never been acted upon. It was pleaded that there was an old wall on the Northern and Eastern side which had been constructed by Ram Nath 45 years ago and the water connection was in the name of Gulab Singh.

The plaintiff tendered in evidence the sale deed besides examining himself and the draftsman. The defendant examined Gulab Singh and closed their evidence. The trial Court held that the sale deed was a 30 years old document and a presumption was attached to it and the suit was based on title and the owner was entitled to possession. It was held that the defendant had failed to prove that the property was ancestral or that it could not have been sold and plaintiff being the owner was entitled to its possession.

Aggrieved by the judgment Gulab Singh alone filed an appeal, which was dismissed.

The appellate Court noted that the defendants had failed to prove that any fraud had been played. No evidence was led to show that they had taken any water connection. It was held that possession was handed over to them, which was permissive in nature and the plaintiff was entitled to its possession being the owner.

I have heard the counsel at great length and I find no merit in the appeal. The main stress of the counsel was upon the admission made by Joginder that the property was ancestral but this aspect had been dealt with by the lower Court. When a plea is raised that the property was ancestral then positive evidence has to be led to show that it had come down from the ancestors. The counsel had also referred to the site plan filed by them but I find the site plan to be incomplete. It does not give the details of the property or the name of the person who owns it. The site plan had not been proved. No draftsman was examined. The defendant had only examined himself. No person from the village came forward to support him. The sale deed is a 30 years old document. Vide this sale deed Ram Nath, father of the appellant had sold the property to the father of the plaintiff. A presumption is attached to a 30 years old document under Section 90 of the Indian Evidence Act regarding its execution and attestation. The father of the plaintiff became owner of the property by dint of the sale deed Ex.P1. The appellant had failed to show that the sale deed had been obtained by fraud.

I find no infirmity in the findings recorded by the Courts below. The findings are affirmed The appeal is dismissed in limine.

May 12, 2017

sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No