

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102

RSA-4165-2015(O&M)

Date of Decision:08.09.2017

Hoshiaro

.....Appellant

Versus

Nanko and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Ms.Savita Rana, Advocate,
for the appellant.

RAMESHWAR SINGH MALIK, J.(Oral)

Unsuccessful defendant No.1 is in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit for declaration filed by the plaintiffs was decreed by the learned trial court vide its impugned judgment and decree dated 06.01.2011 and first appeal of defendant No.1 was also dismissed by the learned first appellate court vide its impugned judgment and decree dated 01.09.2014, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that the plaintiffs were owners in possession of the land measuring 4 kanals 17 marlas bearing Khasra No.1572 and defendants had no right or interest with the same. Plaintiffs had not made any sale or gift in favour of the defendants. The entries in the revenue record were factually wrong. Perusal of revenue record shows that defendants had secured the partition order in the month of October 2006 wrongly alleging to be with mutual consent and the mutation No.2572 had

been mutated. The said proceedings were illegal and the plaintiffs were not bound by the same. The plaintiffs were in continuous possession of the suit property as owners. The defendants were wrongly claiming themselves to be the owners of the suit property and were threatening to oust the plaintiffs from the suit land and to alienate the same for which they had got no right.”

Defendants were put to notice. Despite service, defendant Nos.2 and 3 did not come forward and were finally proceeded against ex parte by the learned trial court. It was defendant No.1 who appeared and filed his contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial court framed the following issues:-

- “1. Whether the plaintiffs are entitled to decree for declaration as prayed for?OPP*
- 2. Whether the plaintiffs are entitled to decree for permanent injunction as prayed for ?OPP*
- 3. Whether the suit is not maintainable in the present form?OPD*
- 4. Whether the plaintiffs have no cause of action to file the present suit?OPD*
- 5. Whether the plaintiffs have no locus standi to file the present suit?OPD*
- 6. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit?OPD*
- 7. Whether the plaintiffs intend to grab the suit land?OPD*
- 8. Whether the suit of the plaintiffs is collusive one?OPD*
- 9. Relief.”*

With a view to substantiate their respective stands taken in their pleadings, both the parties produced their documentary as well as oral

evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiffs have duly proved their case by leading cogent and convincing evidence. Accordingly, suit of the plaintiffs for declaration was decreed by the learned trial court vide its impugned judgment and decree dated 06.01.2011. Feeling aggrieved, defendant No.1 filed his first appeal which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 01.09.2014. Hence, this regular second appeal, at the hands of the unsuccessful defendant No.1.

Heard learned counsel for the appellant.

The entire case of the appellant-defendant No.1 was based on the alleged gift-deed dated 26.02.1952. This gift-deed was allegedly executed in favour of the defendants by Nathu. Appellant was also claiming himself to be the adopted son of this very Nathu. However, defendants miserably failed to prove their pleaded case by bringing on record either the adoption-deed or the gift-deed. Admittedly, appellant was not original resident of village Kot Tikka Khas, where the suit land was situated. He allegedly came to be adopted by his maternal uncle late Sh.Nathu.

On the other hand, plaintiffs brought on record cogent and convincing evidence so as to establish on record their ownership and possession over the suit land. Another plea taken by the appellant was on the basis of mutation No.1404. However, it goes without saying that mutation itself does not confer any title. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Before arriving at his judicious conclusion, the learned Additional District Judge has rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 17 to 23 of its impugned judgment, which deserve to be noticed here, read as under:-

“It is admitted fact between the parties that earlier Mandoo, father of the plaintiffs was owner in possession of the suit land and the said Mandoo is since died. Copy of jamabandi for the year 2003-04 which is proved as Ex.P3 shows that plaintiffs have been recorded as co-owner to the extent of ½ share in the suit property. Defendant Hoshiar Singh @ Hoshiaro is claiming himself to be the owner in possession of the property.

It is evident from the file that defendant Hoshiaro in his written statement has simply pleaded that he is owner in possession of the suit property. In order to prove his title and possession the defendants led oral evidence by examining DW-1 Behri Lal, DW-2-Ramesh Chand, DW-3 Shakuntla Devi besides placing on file various documents. The documents produced by the parties on the file are contradictory in nature regarding deriving title by the defendant Hoshiaro in the suit property. Copy of mutation Ex.D2 shows that there is an entry regarding gift of property by Mandoo in favour of Hoshiaro. Jamabandi for the year 2003-04 Ex.P3, shows that property alleged to have been purchased by the defendant Hoshiaro from the plaintiffs. Mutation No.2572 Ex.P1 also disclosed this fact. The defendants claimed their right in the suit property on the basis of gift deed. No suggestion has been put to the witnesses of the plaintiffs by the counsel for the defendants regarding purchase of property by the defendants from the plaintiffs. Defendant has not stepped into the witness box

rather Shakuntla Devi attorney holder of the defendant appeared as DW-3, who in her cross-examination specifically deposed that she has seen the documents on the basis of which Hoshiaro claims himself to be the owner of the suit property. In her cross-examination she also admitted that those documents are in the shape of registered sale-deed and the same have been produced in the case file. Other witnesses examined by the defendants deposed that Hoshiaro has become owner of the suit property on the basis of gift-deed made by the father of the plaintiffs.

So from the evidence on file led by the defendants, it is clear that defendant Hoshiaro himself not sure whether he became owner of the suit property on the basis of gift-deed or on the basis of sale-deed. Gift-deed has not been produced on file despite availing various opportunities by the defendants. DW-1 Bihari Lal has deposed that gift deed was registered. Defendants claims their title on the basis of mutation.

It is basic law that mutation does not confer any title in the property. The title is derived through the document properly stamped and registered. The defendants have neither produced gift-deed nor sale-deed to prove their title. The single entry regarding the title of defendants in the jamabandi in the absence of document of title cannot be relied upon.

*In case titled as **State of U.P. Vs. Amar Singh and Ors., 1997(2) Apex Court Journal 717 (SC)** wherein Hon'ble Supreme Court of India has held that mutation entries does not confer title to the land and the title is derived from the sale-deed properly stamped and registered. Reliance can also be placed on file titled as **Balwant Singh & Anr Vs. Daulat Singh (dead) by LR's & Anr. 1997 (Supply) Civil Court Cases 262 (SC)**, wherein Hon'ble Supreme Court of India has held that mutation*

*entries are relevant only for the purpose of collection of land revenue and does not confer or extinguish any title in the suit property. Similarly, in case titled as **Dhian Singh and Ors Vs. Sheela Devi & Ors, 2008(2) Civil Court Cases (P&H) 342**, Hon'ble High Court of Punjab & Haryana, Chandigarh has held that mutation does not confer any title and mutation is only for fiscal purpose to complete the record of collection of land revenue.*

*The appellant alleged to be in possession of the sale-deed and gift-deed as deposed by the witnesses of the defendants but neither the sale-deed nor gift-deed has been produced despite availing various opportunities and as such the adverse influence is drawn against the defendants in view of the law laid down as **Ram Avtar Vs. Sushma Kumari and Anr, 2009(4) Civil Court Cases 378**, wherein it has been held that non-production of best available evidence by the parties requires drawing of adverse influence against him.*

From the totality of the facts and circumstances of the case, it is proved that Mandoo was original owner of the suit property and after his death the same has been inherited by the plaintiffs and mutation No.2572 is illegal, null and void and does not confer any right or title of the defendants and not binding upon the plaintiffs. The entries are liable to be corrected accordingly. Hence, this court is of the opinion that trial court has rightly decreed the suit of the plaintiffs.”

A bare combined reading of both the impugned judgments and decrees passed by the learned courts below will make it crystal clear that documentary as well as oral evidence brought on record was very rightly examined and appreciated by the learned courts below, before passing their respective impugned judgments and decrees. All the facts as well as the evidence were very well in the knowledge of the appellant right from day

one. Once he was intending to base his claim over the suit land on the basis of alleged adoption-deed and gift-deed, he was bound to prove those documents, in accordance with law. However, he did not do so, for the reasons best known to him. Once the appellant was withholding the best evidence available with him, an adverse inference was liable to be drawn against him. It is neither pleaded nor argued case of the appellant that he was not granted sufficient opportunity by the learned trial court to put-up his best case before the court. Under these undisputed circumstances, it can be safely concluded that the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

So far as the application moved by the appellant under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure (for short “the CPC) vide CM-10082-C-2015 is concerned, no explanation is forthcoming on record as to why the appellant could not lead his evidence before the learned trial court. Such an application at the stage of regular second appeal would be allowed only in exceptional circumstances as and when an extra-ordinary case is made out. As noticed above, no such specific reasons are forthcoming that even after exercise of due diligence on the part of the appellant, he was unable to bring on record his evidence before the learned trial court.

Further, at the time of filing his first appeal, appellant did not file any such application. During the pendency of his first appeal, he filed two similar applications under Order 41 Rule 27 CPC after a period of two years and 2½ years, which were rightly dismissed by the learned first appellate court at the time of passing the impugned judgment and decree

dated 01.09.2014. It has been specifically held by the learned courts below that there was nothing on the file to show that appellant was ever adopted by Nathu. Similarly, there was no evidence available on record to suggest that Nathu ever executed any gift-deed qua the suit land in favour of the appellant. In this view of the matter, no fault can be found with the concurrent findings of facts recorded by both the learned courts below and the impugned judgments and decrees deserve to be upheld, for this reason as well. Since the application under Order 41 Rule 27 CPC has also been found without any substance, the same is not worth acceptance and it is dismissed accordingly.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court in Faqrudin (dead) through LRs Versus Tajuddin (dead) through LRs, 2008(8) SCC 12, Durga Dass Versus Collector and others, 1996 (5) SCC 618, Balraj Singh and another Versus Gram Panchayat Village Beholi and others, 2016(2) Law Herald 1504, Gurdev Singh Versus Sukhvir Kaur and others, 2017(1) Civil C.C. 670 and Sudershan Nayyar and others Versus State of Punjab and another, 2016(5) RCR (Criminal) 501.

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned courts below. He was also unable to refer to any question of law much less substantial question of law, 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 regard, reliance can be placed

on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 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 present appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

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

September 08, 2017
seema

(**RAMESHWAR SINGH MALIK**)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No

**CM-10081-C-2015 in
RSA-4165-2015**

Hoshiaro

Versus

Nanko and others

Present: Ms.Savita Rana, Advocate,
for the applicant-appellant.

Applicant seeks condonation of delay of 226 days in re-filing
the appeal.

After hearing the learned counsel for the applicant-appellant,
instant application is allowed, for the reasons stated therein. Delay of 226
days in re-filing the appeal is condoned.

C.M. stands disposed of.

September 08, 2017
seema

(RAMESHWAR SINGH MALIK)
JUDGE