

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

**RSA No.1510 and 1988
Date of Decision:09.01.2018**

Ram Singh

...Appellant

Versus

Bhajan Singh and others

...Respondents

COCP No.1584 and 2003

Hazari Lal

...Appellant

Versus

Bhajan Singh and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.A.P.S.Sandhu, Advocate for the appellant in
RSA No.1510 of 1988 and for the petitioner in
COCP No.1584 of 2013.
None for the respondents.

ANIL KSHETARPAL, J. (ORAL)

This order shall dispose of two cases bearing RSA No.1510 of 1988 and COCP No.1584 of 2003.

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

Plaintiff had filed a suit for possession of the property on the ground that he is owner of the same, pursuance to the judgment and decree passed on 27.10.1977 Ex.PX, whereas it is a case of the defendants that brother of the plaintiff Bhartu had sold the property vide sale deed

Ex.DW4/A dated 27.11.1964 in favour of Jage Ram, Surat Singh and Mansa Ram sons of Sabha Chand and thereafter there was an exchange-deed dated 20.3.1972 Ex.DW5/A between Jage Ram, Surat Singh and Mansa Ram in favour of the defendants.

Both the courts below, after appreciating the evidence available on the file, dismissed the suit filed by the plaintiff.

Learned counsel for the appellant has reiterated that the judgment Ex.PX declares the plaintiff to be owner of the property.

A careful reading of Ex.PX, the judgment dated 27.10.1977, shows that the plaintiff had filed a suit for permanent injunction, claiming to be owner in possession. The aforesaid suit was dismissed after having found that the plaintiff is not in possession. Though certain findings were made by the court that the plaintiff is owner but such findings cannot be treated as resjudicata in the present case.

The aforesaid suit was only for injunction. In the injunction suit, the question involved is whether the party is entitled to the injunction or not. Once the previous suit had gone against the plaintiff and the defendants, who were plaintiffs in the previous suit, had no right to challenge such finding. Hence any finding recorded in the previous suit cannot operate as res judicata against the defendants in the present suit.

It is not in dispute that the plaintiff has failed to lead any evidence that he is owner of the suit property. The courts below have discussed each and every relevant aspect of the matter and found that the half portion of the property is in possession of the defendants pursuant to the Sale Deed Ex. DW4/A and Exchange Deed dated DW5/A and remaining portion is being used for common purpose, i.e. Chopal.

A perusal of the revenue record shows that the property belongs to 'Panna'. Generally, property described as 'Panna' is a joint property of a particular Caste/Community residing in the village. The plaintiff cannot claim to be exclusive owner of such property.

In view of the above, there is no good ground to interfere with the concurrent findings of fact arrived at by the courts below.

Dismissed.

In COCP No.1584 of 2003 petitioner is claiming violation of interim order passed on 24.6.1988. In view of the fact that the appeal filed by the plaintiff has been dismissed, no further order in the contempt petition is required. Hence disposed of.

09.01.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No