

**RSA-3934-2001 (O&M)**

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

**RSA-3934-2001 (O&M)**

**Date of decision : 02.08.2018**

Darshan Singh and others

... Appellants

Versus

Hem Raj (deceased) through LR's and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Avnish Mittal, Advocate  
for the appellants.

Mr. Prashant Gupta, Advocate for  
Mr. Suman Jain, Advocate  
for the respondents.

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**AMIT RAWAL, J.**

The appellants-defendants are in present regular second appeal against the judgment and decree of the lower Appellate Court, whereby the suit of the respondents-plaintiffs for joint possession, dismissed by the trial Court, has been decreed.

The plaintiffs instituted the suit on the premise that he and defendant No.2 were the real brothers and sons of defendant No.1. They were the owners of the suit land in equal shares to the extent of 1/3<sup>rd</sup> share. Since, he was residing at Gobindgarh, at his back, defendant No.2 obtained the ownership of the entire land in his name by getting mutation No.15512 in connivance with the revenue staff, therefore, a cause of action arose to claim the declaration viz-a-viz joint possession qua 1/3<sup>rd</sup> share. Defendant No.2 on the basis of alleged mutation executed registered sale deed dated

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26.11.1992 in favour of defendant No.3-Hazar Singh for the alleged sale consideration of ₹1,00,000/-, which was far below the market price. On acquiring the knowledge, he submitted a complaint against Tehsildar for committing irregularities for sanctioning the mutation in favour of defendant No.2.

Defendant No.2 contested the suit as during the pendency of the suit, defendant No.1 expired. It was alleged that the plaintiff in a civil suit No.26 of 17.01.1973 decided on 14.05.1973, admitted that Prem Kumar- defendant No.2 was the owner in possession of the suit property and the suit was barred under the provisions of Order 23 Rule 4 of the Code of Civil Procedure. In fact the suit, aforementioned, was disposed of, on the basis of compromise and the remedy, if any, was to seek redressal of the grievances in accordance with law, but not by separate suit. The plaintiff did not spend any amount on the property as it was purchased by Mohan Lal/defendant No.1 (since deceased). In the oral family settlement, the property, in question, fell to the share of defendant No.2, who became the full-fledged owner in possession. The plaintiff did not have any right, title and interest in the suit property and therefore, rightly so, the mutation, aforementioned, was sanctioned in his favour. Defendant No.1-Mohan Lal had also executed a registered will dated 04.05.1984, conferring, status to defendant No.2 to be sole owner in possession of the suit property.

Defendant No.3 filed separate written statement claimed ownership of the suit property on the basis of the sale deed dated 26.11.1992.

On the basis of the pleadings of the parties, the trial Court framed as many as twelve issues including the issue of relief.

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In order to prove his case, plaintiff examined himself as PW-1 and tendered in evidence the documents (Ex.P1 to Ex.P16) and certified copy of sale deed No.4198 dated 26.11.1992 (Mark B). On the other hand, defendant No.2 appeared as DW-1 and defendant No.3 as DW-2.

On the basis of the aforementioned evidence brought on record, the trial Court dismissed the suit on the premise that the plaintiff failed to seek declaration in respect of the sale as well as the mutation and therefore, could not seek 1/3<sup>rd</sup> share. The lower Appellate Court in an appeal preferred by the plaintiff by reversing the finding of the trial Court decreed the suit on the premise that earlier suit was in respect of six properties, which was withdrawn and the withdrawal of the suit qua title cannot prohibit the co-owner to seek partition.

Learned counsel appearing on behalf of the appellants submitted that the judgment and decree of the lower Appellate Court is not only erroneous, but perverse, for, the suit was not maintainable in the absence of any challenge laid to the sale deed dated 26.11.1992. In the previous partition suit, defendant Nos.1 and 2, therein, also filed written statement, wherein it was categorically stated that the property, in dispute, was purchased by defendant No.1 out of his own funds, but in the subsequent family settlement, the property, in dispute, fell to the exclusive share of defendant No.2. In the earlier suit, the plaintiff had filed a written application dated 14.05.1973, seeking dismissal of the suit on the basis of the compromise, which was accepted. The trial Court, thus, rightly dismissed the suit, There was no occasion for the lower Appellate Court to reverse the said finding. The lower Appellate Court erroneously held that the suit to be maintainable on the premise that the previous suit was

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dismissed on the basis of compromise, but ignored the provisions of Order 23 Rule 4 of the Code of Civil Procedure. Judgment and decree of the earlier suit was completely barred by *doctrine akin to res judicata* and prohibited the plaintiff to claim the joint possession in respect of the suit property. No fresh cause of action accrued in favour of the plaintiff as previous litigation on the request of the plaintiff was settled long time back.

Learned counsel for the respondents submitted that the lower Appellate Court being the last court of fact and law by exercising the powers under Section 96 of the Code of Civil Procedure and on appreciation of evidence both oral and documentary, reversed the finding of the trial Court holding the suit to be maintainable as the plaintiff in rebuttal evidence examined hand-writing expert PW-2, namely, Navdeep Gupta, to show that the correction made in the previous suit from the word DAULA to DADDA and MUDAI was in the handwriting of Mohan Lal and the written statement was also in the name of Mohan Lal, therefore, the provisions of sub-Rule 1 of Rule 1 of Order 23 CPC, could not be pressed into service as the party cannot be prevented to claim 1/3<sup>rd</sup> share by way of joint possession in the suit property, thus, urges this Court for dismissal of the present regular second appeal.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Avnish Mittal, for, the defendants had not been able to prove any compromise or family settlement to establish that there was specific admission on behalf of the defendants with regard to the property, in question, for which, there was a sale deed in favour of the plaintiff, his father and brother. Application (Ex.D2) for withdrawal of suit would, thus,

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not confer any title upon defendant No.2 as any document having a value of more than one hundred required registration. The previous suit was simply dismissed as withdrawn on the statement of the plaintiff and no decree was passed, which could not have a binding effect. Withdrawal of the previous suit was also not opposed. Defendant No.2 could not claim right by virtue of a mutation and thereafter, cannot pass on title vide sale deed of 1992. No documentary evidence has been placed on record to establish that defendant No.1-Mohan Lal had bequeathed or relinquished the entire property in favour of defendant No.2.

It is a matter of fact that Mohan Lal had died during the pendency of the suit, if at all the property was in the name of Mohan Lal and the Will had not been proved, the same was liable to be transferred in equal shares by way of natural succession. The plaintiff derived the title from sale deed dated 03.09.1968 and the aforementioned sale deed was not denied by the parties to the *lis*, which had not been brought on record by the defendants despite his admission as DW-1. The defendants in cross-examination could not produce family settlement, despite asked in cross-examination and came out with a plea that there was some oral partition. The name of the plaintiff continued to be owner to the extent of 1/3<sup>rd</sup> in the disputed land from the jamabandis i.e. Ex.P-14 for the year 1968-69, Ex.P-12 for the year 1978-79, Ex.P-11 for the year 1983-84 and Ex.P-10 for the year 1988-89. It has not been explained at the behest of defendant No.2 as to how the mutation in respect of property was sanctioned in his name exclusively.

As an upshot of my observations, I do not find any illegality and perversity in the judgment and decree of the lower Appellate Court or

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the argument of Mr. Avnish Mittal, is not able to bring the case within the parameters of perversity, much less, no substantial question of law arises for determination.

Resultantly, the present regular second appeal is dismissed.

Interim order dated 28.09.2001 is ordered to be vacated.

**02.08.2018**  
Yogesh Sharma

**( AMIT RAWAL )**  
**JUDGE**

|                           |         |
|---------------------------|---------|
|                           | ✓       |
| Whether speaking/reasoned | Yes/ No |
|                           | ✓       |
| Whether Reportable        | Yes/ No |