

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

RSA No.1460 of 2011 (O&M)

Surjit Kaur

...Appellant

Versus

The Collector, District Amritsar and Ors.

....Respondents

Date of Order: 10.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Akshay Sandhir, Advocate for the appellant.

Ms. Devaki Anand Sullar, AAG, Punjab.

AMIT RAWAL, J (ORAL)

Appellant-plaintiff is in second appeal against the concurrent findings of both the courts below whereby suit for declaration seeking ownership of the property i.e one plot of land having Khasra No.252 described in the plaint has been dismissed vide judgment and decree dated 24.11.2009 passed by Civil Judge (Jr. Division), Amritsar and the appeal filed against the same met with the same fate by the lower Appellate Court.

Plaintiff-appellant instituted the suit alleging that she purchased one plot measuring 95 sq yards from M/s Shambu Nath and sons Ltd G.T Road Shahbad Markanda Haryana (now known as Indian sulphacide industries ltd having its head office at 4, Deen Dayal Upadaya Marg, New Delhi and regd office at Shahbad Marakanda vide sale deed, which was registered in the office of Sub Registrar on 5.4.2002. When the application for sanctioning of the mutation was submitted, the same was forwarded to the Halqa Patwari, who made the report on 14.6.2003 stating that in the column of ownership in the jamabandi the names of Bodhi Raj, Som Raj,

Mulakh Raj, Hans Raj were entered and that the total area of the land was one kanal. It is on account of those incorrect entries which necessitated the plaintiff to file the suit.

The suit was contested by the defendants by raising preliminary objections qua limitation and non-joinder of necessary parties. On merits, it was stated that the plaintiff had purchased the land from the vendors, who were not in possession of any part of the land as the land in dispute had already been sold with possession by the share-holder/Balraj to Mohinder Singh vendee vide jamabandi for the year 1986-87, 1991-92 and 2001-02.

From the pleadings of parties, the trial Court framed the following issues:

- “1. Whether the plaintiff is entitled to permanent injunction as prayed for?OPP*
- 2. Whether the plaintiff is entitled to declaration as prayed for?OPP*
- 3. Whether the instant suit is bad for misjoinder and non-joinder of necessary parties?OPD*
- 4. Relief.”*

Plaintiff in support of her case examined as many as six witnesses whereas the defendants examined Amardeep Singh Thind, Tehsildar as DW1.

On the basis of preponderance of evidence, the trial Court dismissed the suit and the findings were affirmed in appeal by the lower Appellate Court.

Learned counsel for the appellant submitted that both the courts below have abdicated in not referring to the judgment and decree dated 11.12.1993 passed in Civil suit Noi.165 of 1986 vide which the claim of said Mohinder Singh regarding ownership was declined. The plaintiff had

purchased the suit property from M/s Shambu Nath & Sons (Indian Sulphacide Industries) which was the original owner whereas said Balraj Kapoor had no right to sell the property once they were restrained vide judgment and decree dated 16.4.1979 (Ex.PW6/1) and the property was the ownership of company namely M/s Shambhu Nath and Sons Ltd, thus, prayed for setting aside the findings of both the courts below.

On the other hand, learned counsel for the respondents submitted that both the courts below have perfectly appreciated the evidence on record and rightly dismissed the suit of the plaintiff. She submitted that in the aforesaid suit filed for permanent injunction, direction was sought for restraining Mohinder Singh (who was arrayed as defendant No.5) from obstructing/blocking the public street shown as ABCD and subject matter of the said judgment was clearly different and was in respect of some other land.

After hearing learned counsel for the parties and perusing the paper book, I find no merit in the submissions made by learned counsel for the appellant, for, both the courts below non-suited the plaintiff on the premise that ownership of the property at the hands of vendors of plaintiff had not been proved. It was obligatory and incumbent upon the plaintiff to produce the revenue record to show that khasra No.252, which is subject matter of the sale deed was in fact owned by erstwhile company i.e M/s Shambhu Nath and Sons Ltd.

In my view, the plaintiff has failed to discharge her onus under Section 101 of the Indian Evidence Act and thus cannot be held to be owner of the land in dispute qua Khasra No.252 as the seller of the property was not having any valid title in the revenue record. Plaintiff has not been able

to prove that the ownership of the suit property ever vested with Indian Sulphacide Industries. Reliance to the judgment and decree dated 11.12.1993 (Annexure A.1) would also not help the plaintiff as it reveals that parties and subject matter of the said judgment were clearly different.

No other document has been brought on record by the plaintiff so as to enable this Court to form different view than the one taken by both the courts below.

No ground for interference is made out much less no substantial question of law arises.

Dismissed.

May 10, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No