

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

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RSA-1698-2011 (O & M)
Date of Decision:26.10.2018

Gurdeep Kaur

...Appellant

Versus

Bakhtawar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.S. Hundal, Senior Advocate with
Mr. Dinesh Trehan, Advocate
for the appellant.

Mr. Namit Gautam, Advocate
for the respondents.

ANIL KSHETARPAL, J.(Oral)

CM-4757-C-2011

Allowed as prayed for.

CM-4391-C-2013

Application is allowed, subject to all just exceptions.

Legal heirs of Mithu Singh (respondent No.3) as mentioned in
Para 2 of the application are brought on record for the purpose of
prosecuting this appeal only.

Amended memo of parties is taken on record.

Main Case.

Learned counsel for the appellant at the outset has submitted
that the record of the Courts below be summoned.

This Court after noticing that the appeal is pending for the last
7 years permitted the parties to produce photocopies of the record, on which
they wish to rely upon. Hence the request for summoning the original

record is rejected.

The present case is a classical case of fraud being played by the brother and sister not only with the State Government as well as with the subsequent purchasers. Plaintiff-appellant, who is no more, namely Gurdeep Kaur and Bakhtawar Singh were sister and brother respectively. Gurdeep Kaur was a big land owner and in order to save the land from being declared surplus, this entire drama was played. Bakhtawar Singh is alleged to have filed a suit claiming tenancy under his sister Gurdeep Kaur and his nephews Balkaran Singh and Sukhcharan Singh. In the aforesaid proceedings, she admitted that fact and a decree was passed declaring that revenue record entries are incorrect and Bakhtawar Singh is tenant under his sister and nephews. Judgment passed by the Civil Court is dated 25.08.1972. After obtaining the Civil Court decree, the brother i.e. Bakhtawar Singh filed an application under Section 15 of the Punjab Land Reforms Act, 1973 (for short – '1973 Act') seeking permission of the Court to purchase the property. Sister Gurdeep Kaur did not contest the aforesaid application and the application filed by the brother was allowed on 24.08.1973. After having purchased the land, Bakhtawar Singh remained owner for a period of approximately 30 years. Neither the order passed by the competent authority under the 1973 Act was challenged nor the judgment passed by the Civil Court declaring Bakhtawar Singh to be tenant was ever questioned. Bakhtawar Singh sold the land through two registered sale deeds dated 30.07.2003 in favour of defendants No.2 and 3. Immediately, thereafter late Smt. Gurdeep Kaur filed the suit on 14.08.2003 challenging the order passed by the competent authority under the 1973 Act dated 24.08.1973.

Both the Courts on appreciation of evidence have found as a

matter of fact that it was the plaintiff, who had not only suffered civil Court judgment but had also suffered a statement before the competent authority constituted under the 1973 Act admitting the claim of her brother to purchase the property as a sitting tenant.

This Court has heard learned counsel for the parties at length. Counsel for the appellant while drawing attention of the Court to the report of a private handwriting and finger print expert has pointed out that an opinion has been given that late Smt. Gurdeep Kaur did not admit the claim of Bakhtawar Singh as her thumb impressions fixed before the Assistant Collector Ist Grade i.e. competent authority did not match with her standard thumb impression. He further submitted that the order was passed when none of the parties were present and, therefore, the order was without hearing. He hence submitted that the order is null and void.

The facts noticed above clearly lead the Court to a different conclusion than what is being submitted by learned counsel for the appellant. Reports submitted by a private finger print and handwriting expert is to be examined by the Court carefully. Private experts normally give opinion in favour of the party which engages them. Here is a case where facts which are apparent on the file tell a different story. It is not in dispute that the order dated 24.08.1973 was not challenged for a period of 30 years till the time, the suit land was in the name of brother Bakhtawar Singh. Still further learned counsel for the respondents has pointed out that in the civil suit, Balkaran Singh and Sukhcharan Singh sons of Gurdeep Kaur have taken a stand that their maternal uncle is a sitting tenant on the land in dispute. Still further the Civil Court decree passed on 28.08.1972

has never been challenged by the plaintiff even in this suit, although she

claims that a fraud has been played with her and the plaintiff has also taken a stand that she has not also appeared in the Civil Court.

As regards the argument of learned counsel that the order passed by the Assistant Collector Ist Grade is without notice, is just to be noticed and rejected particularly when the order was passed by the Assistant Collector Ist Grade when Gurdeep Kaur admitted the claim of Bakhtawar Singh. There is no requirement that on the pronouncement of the order parties must be present. Once Gurdeep Kaur had joined the proceedings and had admitted the claim as set up by her brother, she was party to the aforesaid litigation and had participated therein.

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

Regular second appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

26.10.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No