

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

208

Date of Decision : 10.10.2018

1.

**CM-10181-C-2012 in/and
RSA No.3784 of 2012 (O&M)**

Germanjit Singh and others

..... Appellants

Versus

Malkit Kaur and others

..... Respondents

2.

**CM-3499-C-2013 in/and
RSA No.1305 of 2013 (O&M)**

Gurdip Kaur and others

..... Appellants

Versus

Malkiat Kaur and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Sudeep Mahajan, Advocate and
Ms. Manjit Saini, Advocate
for the appellants.

Mr. Malkeet Singh, Advocate
for respondents No.1 and 2.

AJAY TEWARI, J. (Oral)

CM-10181-C-2012 in RSA No.3784 of 2012

This is an application for bringing on record the legal heirs of

the deceased-appellant Dalip Singh.

For the reasons recorded, the application is allowed subject to all just exceptions. Persons mentioned in para No.2 of the application are impleaded as LR's of the deceased-appellant. Amended memo of parties is taken on record. Registry is directed to make necessary correction in the memo of parties.

CM-3499-C-2013 in RSA No.1305 of 2013

This is an application for bringing on record the legal heirs of the deceased-defendant-appellant namely Hardev Singh, Kabal Singh and Dalip Singh.

For the reasons recorded, the application is allowed subject to all just exceptions. Persons mentioned in para No.2, 3 and 4 of the application are impleaded as LR's of the deceased-defendant-appellant. Amended memo of parties is taken on record. Registry is directed to make necessary correction in the memo of parties.

Main cases

This order shall dispose of above mentioned two appeals. These two appeals arise out of the same facts. ***RSA No.3784 of 2012*** has been filed by the unsuccessful plaintiffs whose suit for specific performance for agreement to sell dated 20.05.1984 has been dismissed by both the Courts below. ***RSA No.1305 of 2013*** has also been filed by the same person against the decree of redemption of the mortgage.

The admitted facts are that Chaman Singh S/o Bela Singh had mortgaged about 90 kanals 7 marlas of land in favour of the appellants by way of two mortgage deeds dated 14.05.1984 and 16.05.1984. That

mortgage was for a period of 7 years. Admittedly within 6 months of the execution of the mortgage aforesaid Chaman Singh died. In the year 1991 two things happened. Firstly, LRs' of Chaman Singh moved application for redemption of the land and on the other hand the appellants filed the instant suit claiming that on 20.05.1984 Chaman Singh had executed an agreement to sell the land (which he had earlier mortgaged) in favour of the appellants. As mentioned above, the Courts below disbelieved the agreement to sell and redeemed the property and that is how these two appeals have been filed.

Learned senior counsel for the appellants has argued that the lower appellate Court took an unduly harsh view whereas the approach of the trial Court was more balanced. He has pointed out that the attesting witness of the agreement to sell had appeared and had been cross examined unsuccessfully and the trial Court had rightly relied upon his testimony to hold that the agreement to sell was proved. He has further argued that the defendants did not even appear to lead their evidence to testify.

On the other hand counsel for the respondents has argued that once Chaman Singh had executed the two mortgage deeds there was no need for him to have executed an agreement to sell and that too for a transaction which was to take place after 7 years. Secondly he has further argued that the alleged agreement to sell was scribed by one Chaman Dass but the person who was produced to testify was one Parmanand S/o Mulk Raj and there is no reason why the appellants should have got somebody else to testify to be the scribe of the agreement to sell.

In the totality of circumstances, I am not persuaded that the findings of fact recorded by the courts below are either based on no evidence or based on such a perverse misreading of evidence so as to justify the interference of this Court in second appeal.

Appeals stand dismissed.

Since the main cases have been decided, the pending civil miscellaneous applications, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

10.10.2018

Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No