

RSA No. 2501 of 2013 (O&M)

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

**RSA No. 2501 of 2013 (O&M)
Date of decision: 8.5.2018**

Rachan Singh

... Appellant

Versus

Shiv Charan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Vijay Lath, Advocate
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the plaintiff was dismissed by the trial court, vide judgment and decree dated 16.2.2011. As even the appeal preferred against the said decree failed and was dismissed on 1.12.2012, the plaintiff is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a decree of possession of a vacant plot No. 63, shown in blue colour in the site plan, measuring 50' X 150', situated within the abadi deh of village Sialba. And for mandatory injunction, directing the defendants to remove the unauthorised construction raised by them and to further restrain them from alienating the suit property in any manner. The positive case set out by the plaintiff was that he had inherited the suit property from his ancestor, i.e. Gulab Singh. But he failed to prove that he was his successor-in-interest, for the pedigree table (Ex. P-12/A), produced by the plaintiff, rather revealed that Gulab Singh had only one

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son, namely Budh Singh. But, as per the case of the plaintiff, name of the son of Gulab Singh was Hazara Singh. Further, no cogent evidence was brought on record to show that the suit property was actually inherited by the plaintiff from his forefathers. In fact, even earlier the plaintiff had filed a suit for injunction in the year 2002, against the defendants, and apart from injunction, he had also claimed to be the owner of the suit property. However, the said suit was dismissed vide judgment and decree dated 30.5.2008 (Ex. D-1 and D-2), and the said decree has since attained finality. Meaning thereby, the finding as regards ownership/title recorded in the said judgment, would also operate against the plaintiff. Not just that, the pleaded case of the plaintiff was that post dismissal of his injunction suit, a panchayat was convened, wherein the defendants not only conceded their title but also agreed to hand over the vacant possession of the suit land. Which is why, the plaintiff did not assail the decree dated 30.5.2008 by filing an appeal. No such assurance/settlement/compromise was reduced into writing. To prove his case, plaintiff had examined Chohal Singh, Nambardar, (PW1), who deposed that a panchayat had gathered in the baithak of the plaintiff at about 4:30 P.M. Whereas, Om Parkash (PW2), conceded in his cross-examination that the said panchayat was gathered in the haveli of Chohal Singh at about 6:00 P.M. Further, as per the statement of Chohal Singh (PW1), only six persons, i.e. Iqbal Singh (uncle of the plaintiff), Bakshish Singh, Gurbax Singh, Shivcharan, plaintiff and he himself, were present in the panchayat, meaning thereby, Om Parkash (PW2), was not present at the time any such assurance/settlement was reached. Thus, there was an apparent contradiction in the testimony of the two witnesses. Significantly, even in the affidavits furnished by PW1 and PW2, read as their

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examination-in-chief, nothing was referred to as regards their presence in the alleged panchayat. Thus, the only and the inevitable conclusion that the courts below could reach: the plaintiff failed to prove his title.

No ground is made out to interfere with the concurrent findings recorded by both the courts below. No question of law, much less any substantial question of law, arises for consideration, the appeal being devoid of merit, is accordingly dismissed.

8.5.2018

AK Sharma

Whether speaking / reasoned:

Whether Reportable:

(ARUN PALLI)

JUDGE

YES

NO