

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

**RSA-1790-2016
Date of Decision: May 25, 2018**

Mam Kaur and another

...Appellants

Versus

Puran and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Suresh Ahlawat, Advocate,
for the appellants.

ARUN PALLI, J. (ORAL)

Suit filed by the appellant-plaintiffs was dismissed by the Trial Court, vide judgment and decree, dated 29.08.2014. As even the appeal preferred against the said decree failed and was dismissed on 03.09.2015, the appellant-plaintiffs are in Regular Second Appeal. The parties to the *lis*, hereinafter shall be referred to their original positions in the suit.

The plaintiffs prayed for a decree for possession to the extent of 2/3rd share, out of 1/4th share of their father, Harke Ram, in the suit land, total land measuring 94 Kanals – 1 Marla, situated in the revenue estate of village Rohna, Tehsil Kharkhoda, District Sonipat, as also that the mutation sanctioned in favour of defendant No. 1, dated 09.07.1996, and sale deeds, dated 31.07.2002 & 26.09.2002, in favour of defendant Nos. 2 to 9, had no binding effect on their rights.

In brief, the case set out by the plaintiffs was that their late father, Harke, was owner of the suit property, to the extent of his share, in a joint *khata*. For, Harke died on 25.05.1990, he was survived by two daughters, i.e. the plaintiffs, and a son, i.e. defendant No. 1. However, defendant No. 1 got the mutation of inheritance of late Harke, sanctioned in his favour on the basis of oral Will, vide which the suit property was allegedly bequeathed by the deceased in his favour. Whereafter vide sale deeds dated 31.07.2002 and 26.09.2002, he sold the property to defendant Nos. 2 to 9. But, as the plaintiffs too succeeded to the estate of their father, to the extent of their respective shares, by natural succession, the alienation of the entire property by their brother, in favour of defendant Nos. 2 to 9, was invalid.

On a consideration of the matter in issue and the evidence on record, the Trial Court reached a conclusion that concededly the plaintiffs are not in possession of the suit property. Further, in the written statements filed on behalf of the defendants, title of the plaintiffs qua the suit land was denied. That being so, and the plaintiffs not being in possession of the suit land, were rather required to seek a declaration of title, and a decree for possession. Whereas, the plaintiffs filed a simplicitor suit for possession, without seeking any declaration. Thus, such a suit was not maintainable. Concededly, the suit property was sold by defendant No. 1, in favour of defendant Nos. 2 to 9, on the basis of the registered sale deeds executed on 31.07.2002 & 26.09.2002 respectively. The sale deeds in question were a public document. Particularly, when the same were acted upon, and in turn affected the rights of the plaintiffs. Therefore, the plaintiffs would be

deemed to be in knowledge of the said sale deeds. Therefore, in the circumstances, the plaintiffs, if at all aggrieved, could institute a suit within three years, whereas the present suit was filed on 16.12.2008, i.e. after over six years of the execution of the sale deeds. The plea that plaintiffs could claim ownership/title on the basis of inheritance at any stage, was also rejected, as the mutation of inheritance of late Harke, in favour of his son, Puran (defendant No. 1), was never questioned by the plaintiffs till the property was sold to defendant Nos. 2 to 9, and it was only post execution of the sale deeds in favour of defendant Nos. 2 to 9, plaintiffs filed the present suit, which ought to have been filed within three years of the execution of the said sale deeds. Whereas, the present suit was filed after over six years the suit property was transferred in favour of defendant Nos. 2 to 9. Further, defendant Nos. 2 to 9 had set up a plea of being bonafide purchasers for consideration, and it was held that defendant Nos. 2 to 9, at best, could check the records of rights, to ascertain if defendant No. 1 possessed a valid title to the property. And, since the revenue entries, post sanctioning of mutation of inheritance of Harke, consistently showed defendant No. 1 to be the owner in possession, defendant Nos. 2 to 9 had no reason to still doubt his title. Particularly, when Harke had died over a decade ago of the execution of the sale deeds. Thus, they purchased the suit land for valuable consideration in good faith. That being so, the only and the inevitable conclusion that could be reached: the suit was wholly devoid of merit.

On being pointedly asked, learned counsel for the appellant-plaintiffs could not refer to anything on record to show if the conclusions arrived at by both the Courts were either contrary to the position on record

or suffered from any material illegality.

No question of law, much less any substantial question of law arises for consideration. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

May 25, 2018
P Kapoor

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO