

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

**RSA No.2261 of 2016 (O&M)
Date of Decision.26.11.2018**

Gian Singh ...Appellant
Vs

Jeeto and others ...Respondents

2. RSA No.2931 of 2016 (O&M)

Subhash Chand and another ...Appellants
Vs

Jeeto and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Deepak Sharma, Advocate
for the appellant.

-.-

AMIT RAWAL J. (ORAL)

C.M. No.5880-C of 2016 in RSA No.2261 of 2016

For the reasons stated in the application, delay of 65 days
in re-filing of the appeal is condoned.

Application is allowed.

C.M. No.7898-C of 2016 in RSA No.2931 of 2016

For the reasons stated in the application, delay of 69 days
in re-filing of the appeal is condoned.

Application is allowed.

Main cases

This order of mine shall dispose of two regular second
appeals filed by appellants-defendants No.3 and 4 i.e. RSA No.2931
of 2016 and at the instance of appellant-defendant No.5 i.e. RSA
No.2261 of 2016 against the decision rendered in civil suit No.6-CS
of 2009 titled as “Jeeto Vs. Jogindro Devi and others”.

The respondent-plaintiff claimed the declaration of having become owner of 4 kanals as per compromise Ex.CX dated 25.04.2005. Cause of action accrued to the plaintiff in the year 2009 when the defendants executed the sale deed dated 26.11.2007. However during the pendency of the suit, another sale deed dated 5.11.2009 was executed. Defendants No.1 and 2 denied the plaintiff to be the widow of Mam Chand, who propounded his Will dated 10.11.1994. It is on the basis of the Will only that they acquired the mutation and sold the land for valuable consideration. Defendants No.3 to 5 claimed to be bona fide purchasers for valuable consideration and also acknowledged the possession. The trial Court decreed the suit whereas the lower Appellate Court modified the same in the appeal preferred by the subsequent vendors confining the decree to the extent of 4 kanals that is subject matter of the suit property mentioned in compromise *ibid*.

Mr. Sharma, learned counsel appearing on behalf of the appellants-defendants, as described above, submitted that judgments and decrees of the Courts below are not sustainable, as the compromise in the absence of registration could not be looked into. It was not compromise between the members of the family as the plaintiff in cross-examination stated that she was married to some other person and no valid and legal divorce was passed, which required registration. No evidence under Section 50 of the Indian Evidence Act has been brought on record to prove her to be wife of Mam Chand. Gulab Singh, attesting witness of the compromise was not coherent and consistent, therefore, could not be believed. Will of

Mam Chand had not been challenged. Mutation in lieu thereof was sanctioned in favour of defendant No.1 and 2 but the family opposed the title in favour of defendants No.3 to 5. The lower Appellate Court while modifying the decree to the extent of 4 kanals did not mention about the sale deed dated 5.11.2009, therefore, there is illegality and perversity.

I am afraid aforementioned argument of Mr. Sharma is not sustainable, for, in the compromise Ex.CX dated 25.04.2009 shown to this Court during the hearing of the appeal, defendants No.1 and 2 acknowledged her to be widow of Mam Chand, therefore, onus heavily relied upon them to rebut the same. In the absence of the same, adverse inference with regard to according his status to be widow of Mam Chand has rightly been believed. Defendant No.1 and 2 deviated from the compromise in respect of 4 kanals of land, much less, possession having handed over, thus, the statement that suit for declaration on the possession is wholly preposterous. The lower Appellate Court while partly modifying the decree in paragraph 17 of the judgment held as under:-

“...Moreover, there are no sufficient grounds to hold that defendants No.3 to 5 are the bona fide purchasers of the suit property. In these circumstances, the court is of the considered view that the sale deeds executed in favour of defendants No.3 to 5 by defendants No.1 & 2- Joginder Devi and Rekha Devi cannot be upheld as it is liable to be set aside at least to the extent of land measuring 4 kanals qua which the plaintiff has sought declaration. Hence, the findings recorded by learned lower court on issues No.1 & 2 are affirmed to the extent that plaintiff-Jeeto Devi is entitled for declaration as

prayed for qua the land measuring 4 kanals in terms of compromise dated 25.4.2005. However, court does not find any justified ground to declare sale deed No.4571 dated 26.11.2007 as illegal, null and void in toto. So, the sale deeds executed in favour of defendants No.3 to 5 qua share of plaintiff measuring 4 kanals in the suit property described in detail in the head note of the plaint are liable to be set aside being null and void and not binding upon the rights of the plaintiffs in any manner. In the net result, the issues No.1 and 2 are answered accordingly.”

Sale deeds have been confined only to the land excluding 4 kanals, out of total land holding of 16 kanals. This is a fair, just and equitable decision.

As an upshot of my finding, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court , much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeals are dismissed.

(AMIT RAWAL)
JUDGE

November 26, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No