

RSA-4903-2016 (O&M)

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

**RSA-4903-2016 (O&M)
Date of decision : 03.12.2018**

Surat Singh

... Appellant

Versus

Data Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jai Vir Yadav, Advocate
for the appellant.

AMIT RAWAL, J.

The appellant-defendant has not been successful in defending the suit for declaration and mandatory injunction, whereby the plaintiff had claimed declaration of ownership in a suit property being half share each in respect of the plot bearing Aahata No.117, 118 and 119 and also laid challenge to the sale deed dated 22.05.1995 allegedly executed by Ganga Saha/defendant No.2 in favour of defendant No.1.

It was alleged that as per the pedigree table, Dharma @ Dharmla and Seda @ Dhursa, were the owner of the land to the extent of half share. Dharma had two sons, Tekla & Goverdhan. Goverdhan had one son Data Ram/plaintiff. Defendant Nos.1 and 2 in collusion with each other, executed the sale deed without any title and right. Defendant No.1 claimed himself to be *bona fide* purchaser of a land against payment of valuable consideration and denied the sale deed being a forged and fabricated

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document. He also denied the status of the plaintiff to be co-owner of the aforementioned suit property. It was averred that after purchase of the land, the construction was raised and suit was liable to be dismissed as no relief of possession was sought.

The plaintiffs in support of the pleadings examined PW1 Data Ram and brought on record the following documents:

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| Ex.P-1 | Demarcation report dated 18.8.2002 |
| Ex.P-2 | Site plan |
| Ex.P-3 | Memo of presence of parties |
| Ex.P-4 | Site plan |
| Ex.P-5 | Certified copy of Aahata No.117 to 119 |
| Ex.P-5/T | Hindi Translation of Aahata No.117 to 119 |
| Ex.P-6 | Copy of pedigree table |
| Ex.P-6/T | Hindi translation of pedigree table |
| Ex.P-7 | Certified copy of Sajra Nasab Malkaan |
| Ex.P-7/T | Hindi translation of Sajra Nasab Malkaan |

On the other hand, the defendants examined DW1-Harlal, DW2 Surat Singh and DW-3 Bharat Singh and brought on record the following documents:-

- | | |
|----------|---|
| Ex.D-1 | Sale deed bearing No.77 dated 22.5.1995 |
| Ex.D-2 | Certified copy of mutation bearing No.34 |
| Ex.D-2/T | Hindi translation of copy of mutation bearing No.34 |
| Ex.D-3 | Certified copy of jamabandi for the year 1967-68 |
| Ex.D-3/T | Hindi translation of jamabandi for the year 1967-68 |
| Ex.D-4 | Certified copy of mutation |
| Ex.D-4/T | Hindi translation of mutation Ex.D-4 |

In rebuttal, the plaintiff tendered some *per se* admissible documents i.e. pedigree tables Ex.P-8 and its Hindi translation is Ex.P8/T, Ex.P-9 certified copy of order dated 31.8.99 and Ex.P-10 certified copy of

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Sajra Nasab Malkaan of village Maghot Binja Samwal 1997-98.

The trial Court decreed the suit.

It is a matter of record that before the lower Appellate Court, an application for additional evidence at the instance of the defendants for placing on record the documents i.e. copy of Naksha Abadi of village Meghot Binja Ex.D6 (Hindi translation Ex.D6/T), copy of khasra abadi of village Meghot Binja Ex.D7 (Hindi Translation Ex.D7/T), copy of mutation No.422 Ex.D8 (Hindi translation Ex.D8/T), pedigree table Ex.D9 and copy of mutation No.34 Ex.D10 (Hindi translation Ex.D10/T), was filed. However, the lower Appellate Court by taking into consideration the additional evidence did not find favour with the defendants, thus, the present regular second appeal.

Learned counsel appearing on behalf of the appellant-defendant submitted that the plaintiffs miserably failed to prove the fact that Seda was also known as Dharmu/Dhursa. There was no link in relationship of Seda, whereas, Ganga Saha, established on record that he inherited the property from the predecessor-in-interest, who had a valid title. The additional evidence was the testimony to that effect, but the same has gone unnoticed. The plaintiffs were to stand on their own legs, in other words, the plaintiffs failed to discharge the onus or led any evidence as per the provisions of Section 50 of the Indian Evidence Act.

I have heard learned counsel for the appellant-defendant, appraised the paper book as well as the records of the Courts below and of the view that there is no force and merit in the submissions of Mr. Yadav, for, Ex.P-6, Sajra Nasab, the pedigree table, reflected the name of the father of the plaintiff. No doubt, it did not reflect that Sedha was known as

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Dharmu, but it could not lie in the mouth of the defendants to rely upon Ex.D2, mutation of inheritance from one Dhursa regarding ownership of Ahata bearing No.118 and half share of 119. The aforementioned mutation was sanctioned in favour of Hem, Lekhu and Natha and thereafter, in favour of Hem Raj and Lekhu and after demise of Hem Raj in favour of Soni Devi, widow of Hem Raj. Ganga Saha /defendant No.1 failed to establish any relationship with Soni Devi. In the absence of direct relationship, the title in the suit property could not be established. The documents tendered before the lower Appellate Court have not been proved in accordance with law, in absence of their proof and therefore, in my view, have rightly been declined. Ex.P7 and P-8 is the form of Patwari showing pedigree table of defendant No.2, wherein Dharmu was never the ancestor. The defendants miserably failed to establish the ownership of Ganga Saha. I cannot remain oblivious of the fact that Ex.P-5/T, true translation of Aahata No.117 to 119, also established the ownership of Dharma, Dhursa and Dharmila, thus, in view of the direct and cogent evidence of the plaintiff, the defendants failed to established the ownership of property.

As regards the argument of Mr. Yadav that documents tendered were quite old i.e. more than 30 years and therefore, were admissible in evidence as per the provisions of Section 90 of the Indian Evidence Act, I am of the view that the aforementioned argument is meritless as the documents did not controvert the plaintiff's evidence, therefore, presumption under Section 44 of the Punjab Land Revenue Act drawn in favour of the plaintiff is the correct appreciation of law.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the judgments and decrees of the Courts below

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which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeal is dismissed.

03.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**