

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

**RSA-6387-2016 (O&M)
Date of Decision: 09.08.2018**

Om Parkash

... Appellant

Versus

Raghunath Singh & others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. K.S. Dadwal, Advocate for the appellant.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Plaintiff, Om Parkash filed a suit for declaration to the effect that by virtue of the Sale deed dated 16.09.1983 executed by defendant No.1, Raghunath Singh, he is the owner of suit land measuring 2 kanals 2 marlas and as described in the head note of the plaint. Further declaration sought was that the defendants have no right or title with respect to the suit land and the partition order dated 07.06.1985 and mutation No.3208 sanctioned on basis thereof are null and void and further the sale deed dated 24.09.2002 purported to have been executed by Jagdev Singh and Sunish Kumar defendants in favour of Sh. Khairati Lal defendant No.26 is also illegal, null and void. Consequential relief of permanent injunction was sought restraining the defendants from interfering in the possession of the plaintiff over the suit land.

Suit filed by the plaintiff was dismissed by the trial Court on 06.07.2013 and a civil appeal preferred by him has also met the same fate vide judgment dated 19.08.2016 passed by learned Additional District Judge, Pathankot.

Resultantly, plaintiff/appellant is in second appeal before this Court having remained unsuccessful in both the Courts below.

Brief facts of the case are that the suit was instituted on the pleadings that defendant No.1 Raghunath Singh being the exclusive owner in possession of land measuring 2 kanals 2 marlas (khasra No.32R/9/1) sold the same to the appellant herein vide registered sale deed dated 16.09.1983 for sale consideration amount of Rs.3000/-. Appellant was stated to have been put in possession of the suit land at the time of registration of the sale deed and thereafter he had made improvements on the suit land and has developed a mango orchard over the suit land. It was alleged that the defendants in connivance with each other have secured a partition order dated 07.06.1985 from the District Collector 1st Grade, Pathankot and on the basis thereof have even got the mutation entered/sanctioned. Plaintiff/appellant alleged that such proceedings were fraudulent, collusive and not binding upon his rights. It was further averred that with the oblique motive to grab the suit land from the plaintiff/appellant, the defendants have fabricated number of sale deeds including sale deed dated 24.09.2002 executed by defendant No.2 in favour of defendant No.26 pertaining to the suit land. It was stated that the plaintiff continued to be owner in possession and since the defendants were threatening to interfere in his possession, the suit was filed seeking declaration as noticed herein above as also the injunction to restrain the defendants to interfere in his peaceful possession.

Upon notice having been issued, defendant No.26 contested the suit by filing written statement and the remaining defendants were proceeded ex-parte. Defendant No.26 took a preliminary objection that prior

to filing of the suit, some of the defendants had already expired and as such the suit in the present form was liable to be dismissed. Further objection taken was that defendants No.7 to 13 had already sold their share in favour of Bir Kaur etc. and defendants No.14 and 15 have sold their share in favour of Munish Kumar etc. It was asserted in the written statement that the suit land has been purchased from the original owner and as such the defendant is owner in possession by virtue of the sale deed so executed in his favour.

As has been noticed herein above, suit filed by the plaintiff was dismissed and the judgment of the trial Court has been affirmed by the lower Appellate Court.

Learned counsel representing the appellant has submitted that the Courts below have erred in not taking into consideration the admitted fact that land measuring 2 kanals 2 marlas comprised in khasra No.32R/9/1 was purchased by the appellant from Raghunath Singh vide registered sale deed dated 16.09.1983, Ex.P-1. Subsequent to the sale deed, even mutation was duly sanctioned. Further argued that the Courts below have overlooked the testimony of Raghunath Singh, Numberdar, DW1, who in his cross examination had deposed that Raghunath Singh had executed the sale deed for land measuring 2 kanals 2 marlas in favour of the appellant and such witness had also stated that the appellant was in possession over the suit land from the year 1983. Counsel argues that the defendants/respondents in connivance with each other obtained the partition order dated 07.06.1985 from the Assistant Collector 1st Grade, Pathankot and even got the mutation entered and sanctioned but such partition is totally illegal. It is alleged that the Courts below have not dealt with the legality of the partition order dated

07.06.1985 that had been assailed.

Counsel for the appellant has been heard at length and even the records of the case that were requisitioned have been perused.

This Court finds that no evidence had been adduced to substantiate that Raghunath Singh vendor was in exclusive possession of khasra No.32-R/9/1. The position in law is well crystallized to the effect that a vendee gets in transfer from a co-sharer only a share and not exclusive ownership of any portion of the joint land. The appellant to succeed for the declaration that he had prayed for, was bound to prove that the vendor was in exclusive possession to the exclusion of the other co-sharers relating to the property which was subject matter of the sale deed dated 16.09.1983 Ex.P1. The records bear out that such onus was not discharged by the appellant.

Even though the alleged partition order dated 07.06.1985 passed by the Assistant Collector 1st Grade, Pathankot was assailed and a declaration in respect thereof had been prayed for but for certain strange reasons the same was not even brought on record.

A concurrent finding of fact has been recorded by the Courts below that as per latest jamabandis, appellant Om Parkash was not even shown to be in possession of any part of the property. Under such circumstances, even the injunction prayed for has been rightfully declined.

It would also be apposite to take note that the lower Appellate Court while affirming the judgment of the trial Court had taken notice that the suit could not have proceeded against defendants No.1 to 13 without even impleading the legal representatives. Accordingly, it was opined that

suit was not maintainable against defendants No.1 to 13.

This Court does not find any infirmity in the impugned judgments which are based on due appreciation of evidence and founded on cogent and valid reasoning.

Appeal does not raise any question of law.

Dismissed.

09.08.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No