

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

**RSA No.6486 of 2016 (O&M)**

**Date of Decision: 03.10.2018**

Shavinder Singh

.....Appellant

Versus

Gurmukh Singh and others

.....Respondents

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

Present:- Mr. L.S. Sidhu, Advocate  
for the appellant.

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**TEJINDER SINGH DHINDSA J.**

Plaintiff, Shavinder Singh, is in second appeal before this Court having remained unsuccessful in both the Courts below.

Brief facts of the case are that the plaintiff instituted a suit for declaration to the effect that transfer of land measuring 39 kanals 0 marla situated in the revenue estate of Village Marar, Tehsil and District Faridkot, alleged to have been done upon surrender of proprietary rights by Santa Singh (father of the plaintiff) in favour of defendants No. 1 to 4 is null and void and not binding on the rights of the plaintiff. Further the transfer deed dated 27.05.2009, executed by Santa Singh in favour of defendants No. 1 to 4 being null and void qua the rights of the plaintiff. Case set up by the plaintiff/appellant was that the proprietorship of Santa Singh as regards the suit land was ancestral and out of which the plaintiff had 1/4<sup>th</sup> share to the extent of 09 kanals 15½ marlas. It was further averred that Santa Singh, father of the plaintiff had effected family partition between the plaintiff and the defendants in the year 1995 and ever since the parties have been in

possession of their respective shares. Plaintiff stated that he is in possession of his share in the suit land since the year 1995 when the family partition was done even though the girdawari remained in the name of the father i.e. Santa singh being karta and head of the family.

Upon notice, suit was contested in terms of filing of the written statement by defendants No. 1 and 3 denying plaintiff's shares in the suit land. It was further denied that the plaintiff is in possession of any part of the suit land. The stand was taken that there was no mention of the family partition pertaining to land measuring 39 kanals 0 marla in the transfer deed dated 27.05.2009. The khasra girdawaries were stated to be recorded correctly as per cultivation on the spot. Defendants No. 1 to 3 took a stand that Santa Singh had executed the transfer deed voluntarily and after understanding the contents thereof to be correct.

Suit filed by the plaintiff was dismissed by the Trial Court on 01.12.2014 and a civil appeal having been preferred has met the same fate vide judgment dated 08.07.2016, passed by the learned Additional District Judge Faridkot.

Resultantly, the instant second appeal.

I have heard learned counsel for the plaintiff/appellant at length and have perused the pleadings on record.

It is a case where plaintiff/appellant had claimed the suit land to be ancestral in the hands of his father, namely, Santa Singh. Learned counsel has not been able to dispute that no evidence had been adduced on record to prove that the suit land in the hands of Santa Singh was ancestral. No Jamabandi of the previous year vide which father and forefather of defendant No.5/Santa Singh, was reflected to be owner of the suit land was adduced on record. The Courts below upon due appreciation of evidence

have recorded a finding that even though plaintiff/appellant had proved on record Jamabandi, Exhibit P-5, for the year 1979-1980, whereby Dhara Singh, father of defendant No.5/Santa Singh, is shown to be owner of certain property but the Khasra number mentioned in Jamabandi, Exhibit P-5, does not match with the suit property.

Appellant herein had also contended that the transfer deed dated 27.05.2009, Exhibit P-3, had been got executed by defendants No.1 to 4 from Santa Singh, by playing fraud and mis-representation. Onus to prove the same was upon the plaintiff/appellant. He has not led any evidence in such regard and as such has failed to discharge the onus. The transfer deed, Exhibit P-3, was shown to have been executed in the presence of witnesses Jaswinder Singh, Lambardar and Gurbachan Singh. Plaintiff/appellant chose not to even summon the said witnesses in an attempt to prove that the transfer deed, Exhibit P-3, is forged and fabricated and a result of mis-representation and fraud.

Plaintiff/appellant on the one hand is relying upon a recital in the transfer deed, Exhibit P-3, that the suit land was previously partitioned. Strangely, on the other hand he is seeking a declaration that the transfer deed, Exhibit P-3, itself is forged and has been set-up by playing fraud on his father Santa Singh. These two stands cannot co-exist.

On a specific query put to counsel, it has been conceded that even mutation stands sanctioned on the basis of transfer deed, Exhibit P-3, and which is not under challenge. Furthermore, counsel has also conceded that even though plaintiff-appellant was taking a stand that a family partition has took place in the year 1995, yet no documents have been adduced on record to prove the same.

In view of the above, no infirmity is found in the judgments

passed by the Courts below while dismissing the suit for declaration filed by the plaintiff/appellant.

Appeal does not raise any question of law.

Appeal dismissed.

**(TEJINDER SINGH DHINDSA)**  
**JUDGE**

**October 03, 2018**

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No