

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

**R.S.A No.6714 of 2016(O&M)
Date of decision :16.10.2018**

Ram Chander (since deceased) through his legal heir

..... Appellant.

Versus

Mohar Singh and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Bhavna Grewal, Advocate
for Mr. S.K.Yadav, Advocate
for the appellant.

LISA GILL,J

This appeal has been filed challenging judgment and decree dated 21.12.2011 passed by the learned Additional Civil Judge (Sr. Division), Narnaul, as well as judgment and decree dated 10.07.2015, passed by the learned District Judge, Narnaul. Suit filed by the plaintiff-appellant has been dismissed.

Brief facts necessary for the adjudication of the case are that appellant-plaintiff filed a suit for declaration to the effect that he is owner in possession to the extent of $\frac{1}{4}$ share of the land as detailed in the plaint and defendants no. 5 to 8 or their mothers do not have any concern with the suit property. Entry in the revenue record incorporated in favour of defendants no.3 to 4 and 5 to 8, is illegal, null, void and not binding on

the rights of the plaintiff. Mutations dated 29.08.1962, 24.08.1976 and 15.07.1977, release deed dated 16.08.2004 and gift deed dated 16.08.2004, are pleaded to be illegal, null, void and ineffective qua the rights of the plaintiff. It was pleaded that defendants no.1 to 4 are descendants of one Bhoja @ Bhuja. Pedigree table was reproduced in para no.1 of the plaint. Plaintiff claimed to be owner in possession to the extent of $\frac{1}{4}$ share in the suit property. Defendants no.1 and 2 were pleaded to be owners in possession to the extent of $\frac{1}{2}$ share. Defendants no.3 and 4 were pleaded to be owner in possession to the extent of $\frac{1}{4}$ share in the suit property. Defendants no.5 to 8, it was pleaded had no share in the suit property. Plaintiff and defendants no.1 to 4 are the great grandsons of Bhoja Ram, who had four sons namely Chuniya, Ramdhan, Natha and Mohar. Chuniya died issueless. His wife was Parvati Devi. Mohan also died issueless. Nathu had one daughter. Ramdhan had two sons namely Gopal and Birbal and three daughters namely Gulabi, Dhunda and Chhota Devi. All the four sons of Bhoja Ram passed away during his lifetime and mutation of half share was incorporated in the name of Parvati, widow of Chuniya and mutation of $\frac{1}{2}$ share was incorporated in favour of Gopal and Birbal, sons of Ramdhan. Parvati Devi died in the year 1955. Birbal had four sons namely Ram Chander, Mohar Singh, Rohtash and Sultan. Gulabi had one son. Dhunda had two sons namely Rajender and Kanwar Singh. Chhota Devi had one son namely Chet Ram and a daughter namely Mishri Devi. It was pleaded that Dhunda, Gulabi and Chhota Devi have no connection with the suit property. However, defendants no.1 and 2 i.e. the real brothers of the

plaintiff, in collusion with defendants no.3 to 8 got mutated the property of Parvati in favour of Dhunda, Gulabi and Chhota Devi. Mutations dated 29.08.1962, 24.08.1976 and 15.07.1977, were stated to be mere paper transactions. It was further pleaded that the defendants in collusion with each other executed a release deed dated 16.08.2004 in favour of Mohar Singh, Rohtash, Mukesh etc., and a gift deed on the same day was also executed by Ram Singh. All of the same, it was pleaded are not binding upon the plaintiff. He requested the defendants to accede to his requests, but to no avail. Hence this suit was filed.

Suit was resisted by the defendants. In the written statement filed by defendants no.1 to 4, various preliminary objections were raised. Averments on merit were controverted. It was pleaded that after the entry of the mutation on account of death of Parvati, the plaintiff took a loan from PARDB, Nangal Chaudhary on 14.09.1998 and 20.09.1997. He mortgaged the land in favour of the bank, therefore he was aware of the impugned mutation in favour of defendants no.5 to 8. It was denied that the plaintiff had $\frac{1}{4}$ share in the suit property. It was claimed that the plaintiff had only $\frac{1}{7}$ share in the suit property. Mutation dated 29.08.1962, it was submitted was rightly entered in favour of Gopal, Birbal, Gulabi, Dhunda and Chhota Devi. The case set up by the plaintiff was denied in *toto* and prayer for dismissal of the suit was made.

Written statement was separately filed by defendants no. 5 to 8 taking up similar pleas.

Replication was filed. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is owner in possession of $\frac{1}{4}$ share in the disputed land?OPP
2. Whether the mutation no. 273 dated 29.08.1962, mutation no. 389 dated 15.07.1997 and mutation no. 322 dated 24.08.1976 and release deed having registration no. 1393 dated 16.08.2004 and gift deed dated 16.08.2004 are illegal, null and void and against the law?OPP
3. Whether the suit of the plaintiff is time barred?OPD
4. Relief.

Both the parties led evidence in support of their respective claims.

Learned trial Court on considering the facts and circumstances of the case concluded that the plaintiff had failed to prove his case by leading cogent and clear evidence on record. Therefore, suit filed by the plaintiff was dismissed.

Appeal filed by the appellant was also dismissed by the learned Additional District Judge, Narnaul, vide judgement and decree dated 10.07.2015.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that defendants Gulabi, Dhunda and Chhota Devi never become absolute owners of the property in question as Parvati Devi died before 1955 itself, therefore, the property could not in any case have vested absolutely with them. Thus, release deed no. 1393 dated 16.08.2004 (Ex.P-6) and gift deed no. 1394 dated 16.08.2004 (Ex.P-7) executed by them are not legal, valid documents. The same are totally ineffective qua the rights of the appellant-plaintiff, who is entitled to $\frac{1}{4}$ share of the property in question. Both the learned Courts below have grossly erred in dismissing

the suit filed by the appellant-plaintiff. It is thus prayed that the present appeal be allowed and suit filed by the appellant-plaintiff be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file with her able assistance.

It is noticed that the primary contention raised by learned counsel for the appellant is that since Parvati Devi, widow of Chuniya, died before the year 1955, therefore, Dhunda, Gulabi and Chhota Devi being the daughters of Ramdhan son of Bhoja Ram did not acquire absolute rights in the property in question. Their names were wrongly entered in the revenue record being the legal heirs of Parvati. Consequently, it is urged that the release deed and gift deed dated 16.08.2004 could not have been executed by them.

It is relevant to note, at this stage, that there is no evidence on record to indicate the date of death of Parvati. Mutation no. 274 (Ex.P-3), reveals that after the death of Parvati, here share was duly entered in favour of Gopal, Birbal, Gulabi, Dhunda and Chhota Devi. Birbal is the father of the present appellant. Gulabi, Dhunda, Chhota Devi are the paternal aunts (Buas')/ their legal representatives. It is evident that the plaintiff-appellant never challenged the said mutations entered so many years ago, till the execution of the release deed and gift deed dated 16.08.2004. The contention that the plaintiff was not aware of the said entries is clearly falsified by the evidence on record. Jamabandi for the year 2002-03 (Ex.P-4), reveals that the plaintiff had taken a loan from the bank on 14.09.1998 after mortgaging his share. At that time, names of all

the defendants were duly reflected in the jamabandi as co-sharers. The present suit was filed only after the execution of the release and gift deed dated 16.08.2004. It is thus clear that the appellant-plaintiff is aggrieved of the act of his paternal aunts (Buas')/their legal representatives in executing the gift deed and release deed in favour of Mohar Singh, Rohtash and Mukesh etc.

In the factual matrix of the case, learned Courts below have rightly held that the plaintiff has failed to prove on record that defendants in question had no right to execute the release deed and gift deed respectively in favour of defendants no.1 to 3. Plaintiff-appellant has indeed failed to prove that he is owner in possession to the extent of $\frac{1}{4}$ share of the suit property.

Defendants-Gulabi, Chhota Devi and Dhunda, were indeed the absolute owners of their shares of the suit property as recorded in the jamabandies for the year 1965-66, 1976-77 and 2002-03. Gulabi and Chhota Devi were succeeded by their legal heirs-Ram Singh, Chet Ram and Mishri Devi. Chet Ram and Mishri Devi transferred their shares by virtue of the gift deed Ex.P-7 in favour of Mohar Singh, Rohtash and Mukesh. Dhunda transferred her share by way of gift deed Ex.P-6 in favour of Mohar Singh and Rohtash son of Birbal to the extent of $\frac{2}{3}$ share and Mukesh son of Sultan to the extent of $\frac{1}{3}$ share. After the death of Gulabi, mutation *qua* her property was sanctioned in favour of her legal heirs-Ram Singh. Appellant-plaintiff is unable to prove any fraud or misrepresentation on the part of the defendants.

Learned counsel for the appellant-plaintiff is unable to point

out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decree dated 21.12.2011 and 10.07.2015 passed by the learned Addl. Civil Judge (Sr. Division) Narnaul and learned District Judge, Narnaul, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

16.10.2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No