

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

RSA No.6793 of 2016 (O&M)

Date of decision:26.11.2018

Mohan

... Appellant

Vs.

Madan Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr.Gaurav Singla, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The present Regular Second Appeal is directed at the instance of appellant-defendant no.2 against the judgment and decree of the Lower Appellate Court decreeing the suit of the plaintiff which was dismissed by the trial Court.

The plaintiff sought the mandatory and permanent injunction on the premise that as per the resolution dated 04.03.1998, Gram Panchayat/defendant no.1 allotted him a plot as his name was figuring at serial no.30. Even the possession was delivered and construction of the house was also raised.

The defendant by taking the advantage of commonality of the father, got executed the gift deed on 15.07.1998 as no possession was delivered to him. The plaintiff acquired the knowledge of the fraud and misrepresentation in the month of May 2009 when copy of the gift deed was

obtained.

Appellant-defendant no.2 opposed the suit and supported the allotment of 15.07.1998 in his favour on the premise that his name was entered in the list of eligible persons.

On the basis of aforementioned pleadings, the trial Court framed the followings issues:-

- “1. Whether the plaintiff is entitled to the decree of permanent injunction as prayed for?OPP*
- 2. Whether the plaintiff is entitled to the decree of mandatory injunction?OPP*
- 3. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?OPP*
- 4. Whether suit is not maintainable in present form?OPD*
- 5. Whether the plaintiff has no locus standi/cause of action to file the present suit?OPD*
- 6. Whether the plaintiff is estopped from filing the present suit by his own acts and conducts?OPD*
- 7. Relief.”*

On the preponderance of evidence, the trial Court dismissed the suit but the appeal as noticed above has been allowed.

Mr. Gaurav Singla, learned counsel appearing on behalf of the appellant-defendant no.2 submitted that the plaintiff has not established the essential ingredients for allotment being a landless person. In fact, the allotment was made in the name of appellant-defendant no.2, Mohan alias

Madan son of Sukhi and not in the name of plaintiff, Madan Singh son of Sukhi. This fact has been proved through the testimony of DW1-Omparkash Nambardar, who brought on record the allotment in his favour. The finding of holding 3/4th of agricultural land is neither here nor there in the absence of documentary evidence, therefore, there is gross illegality and perversity in the finding under challenge.

I am afraid the aforementioned argument is not sustainable, for, DW1-Omparkash Nambardar in cross-examination stated that he did not verify the Voter Card of Mohan Singh son of Sukhi. It is just commonality of the father, thus, ambiguity arose instead of issuing the allotment letter in favour of plaintiff, issued to defendant no.2. Sale deed dated 18.10.2004 Ex.P3, also indicated the name of defendant no.2 as Mohan Singh son of Sukhi. No evidence has been brought on record to establish that he had been called or named as Mohan alias Madan. All these factors weighed in the mind of the Lower Appellate Court being the last Court of facts and law while allowing the appeal. On the contrary, plaintiff has proved on record voter list, Ex.P5 through the testimony of PW6 and serial no.30 of the resolution, whereby, it has been recorded as Madan son of Sukhi and not Mohan @ Madan son of Sukhi.

The appeal is also accompanied by an application seeking condonation of delay of 85 days in filing the appeal. No reasonable explanation has been given in the application for condoning the delay.

No ground for interference is made out in the findings of facts and law arrived at by the Lower Appellate Court.

The appeal is dismissed on limitation as well as on merit.

(AMIT RAWAL)
JUDGE

November 26, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No