

**In the High Court of Punjab and Haryana at Chandigarh**

**RSA-2004 of 2017(O&M)  
Date of Decision:15.1.2018**

**Bhajan Singh**

**---Appellant**

**vs.**

**Naresh Kumari and others**

**---Respondents**

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

**\*\*\***

**Present: Mr. Vishal Goel, Advocate for the appellant**

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**Rekha Mittal, J.**

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts below whereby suit filed by the appellant/plaintiff was dismissed by the trial court and appeal preferred against judgment and decree passed by the trial court did not find favour with the Additional District Judge, Hoshiarpur.

The appellant filed a suit for declaration that sale deed dated 2.6.1998/5.6.1998 executed by his father Thakur Singh in favour of Tarsem Singh (since deceased) is liable to be deemed as sale deed of land without possession to the extent of land measuring 4 kanals out of khasra No. 3//2/1/2 (0-10), 9/2/1 (2-6), 10/2 (6-1), 11/1 (5-11) total land measuring 14 kanals 8 marlas in place of land measuring 4 kanals out of khasra No. 13/14 (7-12), 17(7-12) total measuring 15 kanals 4 marlas.

The sole submission made by counsel is that the courts below have failed to appreciate facts elicited in cross examination of Naresh Kumari widow of Tarsem Singh DW1 whereby she has admitted claim of the appellant/plaintiff that her husband had purchased 4 kanals of land out of khasra Nos. 3//2/1/2 (0-10), 9/2/1 (2-6), 10/2 (6-1), 11/1 (5-11) and the appellant/plaintiff is in possession of land comprised in khasra Nos.13/14 (7-12), 17(7-12). It is further argued that there can be no better evidence than admission made by the contesting party, therefore, suit filed by the appellant/plaintiff is liable to be decreed on the basis of clear admission of Naresh Kumari wd/of Tarsem Singh.

The trial court in para 17 of the judgment has dealt with the alleged admission of Naresh Kumari. A relevant extract therefrom, reads as follows:-

“However, I am of the considered view that, contention raised by the ld. Counsel for the plaintiff, in this regard, is absolute misconceived and misplaced. It would be pertinent to mention over here that, it is no where the case of the defendant No. 1 that she was present alongwith her husband Tarsem Singh at the time of execution of sale deed dated 5.6.1998. Therefore, she cannot claim to be a person who could testify that which property her husband had purchased by way of sale deed dated 5.6.1998. Even otherwise, it is a settled law that, admission cannot be read into evidence if it is stray admission and not made in unequivocal and clear terms. Further admissions cannot be read in isolation from the case of a party and entire

evidence led by a party is to be seen as a whole.”

The same issue was raised before the Court in Appeal and was answered in the negative in view of observations recorded in para 13, reads thus:-

“The Registering Officer has duly registered the sale deed. There has not been lead any worthwhile evidence to prove any fraud played upon the father of plaintiff-appellant. In the circumstances the learned trial court has rightly held that even if the statement of the wife of vendee i.e. PW1 about sale of land out of khasra No. 3//2, 9/2, 10/2, 11/1 cannot be taken to be an admission confirming any title upon the appellant. Moreover, it is settled principle of law even that title cannot be conferred on the basis of admission of the parties.”

Indisputably, the sale deed dated 2.6.1998 was executed and registered by Thakur Singh, father of the appellant in favour of Tarsem Singh (since deceased) and the suit has been filed against his legal heirs namely Naresh Kumari and others. There is nothing on record suggestive of the fact that either the appellant or Ms. Naresh Kumari was present at the time of execution of a sale deed by Thakur Singh in favour of Tarsem Singh.

The present suit was instituted in the year 2011 to challenge sale deed executed in June 1998. The appellant did not plead the exact date of death of Thakur Singh. However, it has been averred that Sh. Thakur Singh passed away four years prior to institution of the suit meaning thereby that Thakur Singh remained alive till 2007 and approximately nine years after execution of the sale deed. The very fact that Thakur Singh did

not choose to file a suit to challenge the sale deed in question on any ground whatever is sufficient to falsify and belie plea of the appellant that Thakur Singh intended to sell land measuring 4 kanals out of khasra No. 3//2/1/2, 9/2/1 etc. in place of khasra No. 13/14, 17. This apart, a presumption of correctness is attached to the endorsement made by the registering authority regarding its correctness.

Bhajan Singh appellant appeared in the witness box. A relevant extract from his cross examination reads as follows:-

“It is correct that my father was sold the land to Sh. Tarsem Singh. It is correct that Tarsem Singh was also mortgage the purchase land to the PNB Bank, Budhabar for loan. It is wrong to suggest that since the purchasing the suit land defendants no. 1 to 3 are the purchaser of the suit property. It is wrong to suggest that my father was given to the possession of the purchase land on the same day of the execution the sale deed. It is correct that my father was executed the sale deed on consent without any pressure.”

Perusal of cross examination of Bhajan Singh would show that appellant knew about execution of the sale deed since its execution by his father. He has admitted that sale deed was executed by his father with consent without any pressure. Under the circumstances, plea of the appellant that wrong khasra numbers have been mentioned on account of some misrepresentation by Tarsem Singh, beneficiary under the sale deed, has no legs to stand.

This brings the court to the alleged admission by Naresh

Kumari DW1. Admittedly, Naresh Kumari was not present at the time of execution of the sale deed, therefore, an admission made by her which is contrary to contents of the sale deed cannot be used to disadvantage of the respondents. The trial court has rightly held that statement of a witness is to be read as a whole for its correct interpretation and appreciation. In the opening part of cross examination, she has admitted that her husband purchased land out of land measuring 14 kanals 8 marla comprising khasra Nos. //3/1/2(0K-10), 9/2/1(2K. 6M) 10/2 (6-1M) 11/1(5K.11-M). She has further admitted that she is in possession of 4 kanals of land out of aforesaid khasra numbers. However, she has denied possession of the appellant/plaintiff of khasra No. 13//14, 17. In the later part of cross examination, she has deposed that she is not aware of khasra number of her possession. Again said, she is in possession of khasra no. 13//14,17. She has denied the suggestion that her husband purchased land of khasra Nos. //3/2/1/2, 9/2/1, 10/2, 11/1. She has also denied that at the time of registry, her husband has wrongly recorded khasra nos. 13/14, 17 in the registry.

As per the settled position in law, civil disputes are to be decided on the basis of balance of probabilities. When facts and circumstances of the present case are examined in the light of aforesaid materials on record, it is difficult to accept that concurrent findings recorded by the Courts suffer from perversity having been recorded by ignoring the alleged admission made by Naresh Kumari DW1.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)  
Judge

15.1.2018  
paramjit

Whether speaking/reasoned: Yes/No  
Whether reportable : Yes/No