

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

**RSA-205-2017 (O&M)
Date of Decision:09.08.2018**

Man Mohan Singh & others

... Appellants

Versus

Gurbachan Singh & others

... Respondents

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

Present:- Mr. Sachin Kaushik, Advocate for
Mr. Rakesh Nehra, Advocate for the appellants.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

CM-420-C-2017:

In view of the averments made in the application, duly supported by an affidavit, prayer is allowed. Delay of 268 days that has occurred in re-filing the accompanying appeal is condoned.

Application is disposed of.

CM-422-C-2018:

In view of the averments made in the application, duly supported by an affidavit of the appellant No.1, Man Mohan Singh, prayer is allowed. Delay of 57 days that has occurred in filing the accompanying appeal is condoned.

Application is disposed of.

Main case:

Suit filed by the plaintiffs for mandatory injunction against the defendants was partly decreed by the trial Court on 30.09.2011. Appeal

preferred by the plaintiffs before the lower Appellate Court for their suit to be decreed in toto has been dismissed vide judgment dated 19.03.2015 passed by learned Additional District Judge, Sonapat and thereby affirming the judgment and decree of the trial Court.

2. Plaintiffs/appellants are in second appeal before this Court.

3. Brief facts are that the suit for mandatory injunction was filed on the pleadings that the defendants vide registered sale deed dated 01.07.1988 had sold land falling to their share measuring 90 kanals 6 marlas situated in the revenue estate of village Kharkhoda for a sale consideration amount of Rs.11 lakhs to the plaintiffs. At the time of sale, the vendors i.e. the defendants had represented themselves as absolute owners in possession of the suit property and had claimed that the land was free from all sorts of encumbrances and was not involved in any kind of litigation. Under such circumstances, plaintiffs/appellants had purchased the suit land of 90 kanals 6 marlas and even got the same mutated in their favour in the year 1994. Thereafter, one Sukhbir Kaur widow of Pritam Singh and her adopted son Gurmit Singh filed a Civil Suit No.280 of 1994 on 12.06.1994 against the plaintiffs as well as defendants in the Court of Civil Judge (Senior Division), Sonapat challenging the sale deed dated 01.07.1988 in favour of the plaintiffs. Challenge was on the ground that Sukhbir Kaur and her adopted son Gurmit Singh were owners to the extent of 1/11th share in the land that had been sold by the vendors/defendants to the plaintiffs vide registered sale deed dated 01.07.1988. Appellants herein contested the suit but the defendants did not appear in the Court to resist the claim set forth by Sukhbir Kaur and her adopted son and ultimately suit was decreed and 1/11th

share in the suit land equal to 8 kanals 4 marlas went out of the hands of the plaintiffs/appellants. Present appellants also preferred an appeal against the judgment passed by the trial Court but the same was dismissed on 24.12.2005. In a nutshell, the sale deed and mutation in favour of the appellants was held to be illegal, null and void to the extent of 1/11th share. Against such backdrop, mandatory injunction was sought by praying that the defendants are liable to compensate the plaintiffs/appellants by making payment of Rs.1 lakh by way of return of the sale consideration plus cost of stamps and registration charges along with interest @ 12% per annum and further for payment of damages equal to the difference of sale consideration and present market value of the land in question.

4. Suit having been contested vide judgment dated 30.09.2011 passed by the trial Court, partial relief was granted and the plaintiffs were held entitled for recovery of Rs.1 lakh and proportionate stamp charges along with interest @ 6% per annum from the date of institution of the suit till realization of the decretal amount. The judgment and decree passed by the trial Court has been affirmed by the lower Appellate Court in terms of judgment dated 19.03.2015 upon an appeal having been preferred by the plaintiffs/appellants.

5. The solitary contention raised by counsel representing the appellants is that findings having been recorded by the trial Court that 1/11th share of the purchased property had gone out of the hands of the appellants due to litigation which was not contested by the defendants/respondents deliberately and for no fault of the appellants, the suit ought to have been decreed in toto and the appellants are entitled to be compensated by way of

damages equal to the differences of sale consideration amount and the present market value of the land in question.

6. Having heard counsel for the appellants at length, this Court is of the considered view that no basis for interference is warranted.

7. The plaintiffs/appellants with regard to their claim for damages as difference of the rate of land since 1988 upto the date of filing of the suit had produced a sale deed Ex.P8 to assert that the value of the land has arisen many fold and the adjoining area can now fetch more than Rs.50 lakhs per acre. Apart from the sale deed Ex.P8, no other evidence had been adduced on record. The Courts below have rightfully discarded the evidence adduced by the plaintiffs/appellants in the shape of Ex.P8 on the ground that it was one random transaction and that too, in respect of a parcel of land which was situated on the road head. Another factor which has rightfully weighed with the trial Court in declining the prayer for damages is that the plaintiffs/appellants had remained in possession of the disputed property and had accordingly enjoyed usufruct of such property till such time the same went out of their hands on account of passing of judgment and decree dated 24.12.2005 and whereby appeal filed by the appellants against the judgment and decree passed in favour of Sukhbir Kaur and her adopted son was dismissed. The Courts have, however, held the appellants entitled for recovery of Rs.1 lakh along with proportionate stamp charges with interest @ 6% per annum from the date of institution of the suit till realization of the decretal amount.

8. In an overview of the matter, no intervention under the peculiar facts and circumstances is warranted.

- 9. Appeal does not raise any question of law.
- 10. Dismissed.

09.08.2018

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

- i) Whether speaking/reasoned? Yes/No
- ii) Whether reportable? Yes/No