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

RSA-5663-2014 (O&M)

Date of decision : 03.12.2018

Rajwati

... Appellant

Versus

Bhupinder Chowdhari and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Aditya Jain, Advocate
for the appellant.

AMIT RAWAL, J.

The appellant-defendant No.1 has not been successful in defending the suit for possession and challenge to the sale deed dated 03.10.2005 executed by Diwan Chand in favour of the defendants.

The plaintiffs alleged that the suit property was owned by Krishna Ram @ Kishan Chand and Mool Chand together. Mool Chand had two sons, namely, Sunder Dass and Dev Raj @ Jai Dev. Dev Raj died on 30.09.1970, whereas Sunder Dass on 19.11.1980. Vidyawati, wife of Sunder Dass died in the year 1988. Bhupinder Chowdhri/the plaintiff was the only legal heir and successor-in-interest. Mool Chand was allotted an agricultural land bearing Khewat No.15, Khata No.23, Rect. No.22, Killa No.22, measuring 7 kanals 5 marlas, situated in Village Hoshangabad, Tehsil Palwal, District Faridabad, but due to clerical mistake by the revenue officials, the name of Diwan Chand came to be recorded instead of Dev Raj

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@ Jai Dev. On the basis of the aforementioned entry, Diwan Chand, vide sale deed dated 03.10.2005, sold piece of land to defendant Nos.2 to 4, which was nonest in the eyes of law as Dev Raj had already died on 30.09.1970.

The defendants opposed the suit, claimed to be owner by virtue of registered document dated 03.10.2005 and assailed the maintainability of the suit as per the provisions of Section 34 of the Specific Relief Act as no date of alleged dispossession or defendants having acquired the possession being alleged. The sale deed was witnessed by one Prehlad, husband of appellant-defendant No.1.

On the basis of the pleadings, the trial Court decreed the suit and the appeal preferred by the defendants before the lower Appellate Court also met with the same fate.

Learned counsel for the appellant-defendant No.1 submitted that the suit of the respondents-plaintiffs without payment of ad valorem court fees regarding value of the property sought to be claimed and without asserting the right of dispossession, was not maintainable. Entry in name of Diwan Chand, since 1964 till 2000, reflected in the revenue record and there was no challenge to that.

I am afraid the aforementioned argument is not sustainable as Ex.P6 and Ex.P-9, allotment letter, reflected the allotment of the land in favour of Mool Chand. Mool Chand had admittedly two sons, namely, Sunder Dass and Dev Raj. Owing to clerical mistake committed by the revenue officials, the name of Diwan Chand instead of Dev Raj crept in. In fact, it was a fraud having played upon by some Diwan Chand, who executed the sale deed in favour of the defendants. Be that as it may, jamabandis do not confer a title

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viz-a-viz the allotment letter. As regards the question of court fee, since the land in dispute was agricultural and the plaintiffs were not signatory of the sale deed and in view of *ratio decidendi* culled out by the Full Bench of this Court in **“Niranjan Kaur V/s Nirbigan Kaur” 1982 PLR 127**, the stranger cannot be called upon to pay the ad valorem court fee regarding price of the land sought to be possessed.

In this view of the matter, there cannot be any illegality or perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination.

Resultantly, the regular second appeal is dismissed.

03.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**