

RSA Nos.3096 & 3329 of 2017 (O&M)

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

Date of decision : 04.12.2018

1. RSA-3096-2017 (O&M)

Bhupinder Singh

... Appellant

Versus

Tarsem Singh and others

... Respondents

2. RSA-3329-2017 (O&M)

Tarsem Singh and others

... Appellants

Versus

Bhupinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Arora, Advocate
for the appellant in RSA-3096-2017.

Mr. R.K. Arya, Advocate
for the appellants in RSA-3329-2017.

AMIT RAWAL, J.

This order of mine shall dispose of two regular second appeals bearing **RSA No.3096 of 2017** titled as **“Bhupinder Singh V/s Tarsem Singh and others”** at the instance of the plaintiffs, whereby the suit for declaration dismissed by the trial Court, has been partly decreed by the lower Appellate Court by confining to the monetary consideration and **RSA No.3329 of 2017** titled as **“Tarsem Singh and others V/s Bhupinder Singh and others”** at the instance of the appellants-defendants with regard to the partial decree granted in favour of the plaintiffs.

Bhupinder Singh/plaintiff instituted the suit claiming ownership of land measuring 2 kanals 11 marlas to make the deficiency of

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balance area after deducting 15 marlas mutated in his favour in pursuance to the sale deed dated 26.02.2001 executed by Sheela Wanti, mother of defendant Nos.1 to 6, for a total sale consideration of ₹40,000/-. In fact, it was alleged that Sheela Wanti was the owner of land measuring 5 kanals 5 marals and had sold the land measuring 4 kanals 10 marals, but mutation in respect of land measuring 15 marals was incorrect as Sheela Wanti was having joint-holding of 2 kanals 11 marals with other co-sharer. It is, in these circumstances, the suit for joint possession was filed to the extent of 2 kanals 11 marlas.

The defendant Nos.1 to 6 opposed the suit and defendant Nos.7 to 14 claimed to be *bona fide* purchasers by virtue of a sale deed in respect of land measuring 10 kanals 13 marals, sold by defendant Nos.1 and 2, vide sale deed dated 08.06.1992.

Mr. Sandeep Arora, learned counsel appearing on behalf of the appellant in RSA No.3096 of 2017 submitted that once the plaintiff has been able to prove on record the sufficient evidence to show the co-ownership of Sheela Wanti with other co-owners in respect of subject matter of land measuring 2 kanals 11 marlas, declaration by granting the ownership of balance area after deducting 15 marals should have been granted particularly when co-ownership was not denied.

Mr. R.K. Arya, learned counsel appearing on behalf of the appellants in RSA-3329-2017 submitted that monetary consideration cannot be passed as claim was barred by law of limitation, for, the suit was filed in the year 2010, whereas the sale deed is of 26.02.2001.

I have heard learned counsel for the appellants in both the appeal, appraised the paper book and of the view that there is no merit and

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force in the submissions of respective counsel, for, no doubt the plaintiff specifically pleaded of having made reasonable enquiry before the purchase of the land as revenue record did not reflect the ownership of Sheela Wanti to the extent of 15 marals, for which, mutation, as noticed above, was sanctioned in his favour, but she had already partitioned with the piece of land along with defendant Nos.1 and 2. Be that as it may, the findings of fact arrived at by the lower Appellate Court in awarding the compensation in terms of the money regarding the other deficient area of the land is correct approach owing to the fact that until and unless joint ownership of Sheela Wanti in respect of land measuring 2 kanals 11 marlas had not been partitioned, the plaintiff could not have been accorded full ownership and exclusive possession. The audacity of the defendants in challenging the money consideration is writ large. The lower Appellate Court should have initiated some criminal action, be that as it may, in the absence of the same, I refrain myself to comment further, but such person should not be entertained laying challenge to the decree based on the equity as well.

In this view of the matter, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the regular second appeals are dismissed.

04.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**