

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

RSA No.6217 of 2014 (O&M)  
Date of decision: 10.05.2018

Rajwati

... Appellant

versus

Roshni & ors.

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

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

Mr. Adarsh Jain, Advocate with  
Ms. Kamal, Advocate  
for respondent Nos.1 & 2.

Mr. Abhimanyu Singh, Advocate  
for respondents No.3A, 3B, 3C, 6 & 7.

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**Amit Rawal, J(Oral)**

The appellant-defendant No.5 is in regular second appeal against the concurrent finding of the fact whereby the suit of respondent-plaintiff claiming following relief has been decreed:

*“Claim: A decree for declaration to the effect that the plaintiffs are owner and in possession of the suit land mentioned in para No.1 of the plaint and impugned judgment and decree dated 08.05.1990 passed in Civil Suit No.264 of 1990 titled Rajpal and others vs. Roshni etc. from the court of Addl. Civil Judge, Sr. Div. Palwal and mutation No.5242 dated 10.01.1991 are illegal, null and void ineffective, inoperative, obtained through fraud and misrepresentation and way of cheating and personation and are not binding on the ownership and possessory rights of the plaintiffs and qua the suit land mentioned in para No.1 of the plaint be passed in favour*

*of the plaintiffs and against the defendants with the costs of the suit. As a consequential relief a decree for permanent injunction thereby restraining the defendants from interfering in the ownership and possession of the plaintiffs, from dispossessing the plaintiffs and from changing the nature of the suit land by way of raising any construction thereon and from alienating in any manner whatsoever, the suit land mentioned in para No.1 of the plaint illegally and forcibly and on the basis of the impugned judgment and decree dated 08.05.1990 and mutation No.5242 dated 10.01.1991 be also passed in favour of the plaintiffs and against the defendants. In case the defendants succeed in dispossessing the plaintiffs from the suit land mentioned in para No.1 of the plaint illegally and forcibly during pendency of the suit then a decree for possession on the suit land and for mandatory injunction thereby directing the defendants to restore the suit land in its original condition be also passed in favour of the plaintiffs and against the defendants. Or such other relief which the Hon'ble Court deems fit and proper be also given to the plaintiffs.”*

The decree passed in the aforementioned case is as under:

*“The suit of plaintiffs succeeds and the same is hereby decreed with costs to the effect that the judgment and decree dated 08.05.1990 passed in civil suit No.264 of 1990 titled as “Rajpal etc. vs. Roshni etc.” and mutation No.5242 dated 10.01.1991 entered on the basis of said judgment and decree, are illegal, null and void obtained on the basis of impersonation. The revenue entries on the basis of impugned decree dated 08.05.1990, are liable to be rectified accordingly. The sale deed dated 16.03.2007 executed in favour of defendant No.5 is illegal, null and void and is not*

*binding on rights of the plaintiffs.”*

Mr. Suman Jain, learned counsel for the appellant submits that though the Courts below had set aside the previous decree dated 08.05.1990 passed in civil suit No.264 of 1990 titled ***Rajpal and others vs. Roshni etc.*** on the premise that the respondents-plaintiffs were minor at the time when aforementioned decree was passed. The respondents-plaintiffs were none-else but the daughters of Badle, who had another two sons Mange and Chanda. The appellant is a bona fide purchaser of land measuring 27 kanals odd marla by virtue of sale deed dated 16.03.2007 from Mange.

During the course of the day, another matter i.e. RSA No.568/18 came in urgent hearing before this Court preferred by the defendants i.e. the grandsons and sons of Badle challenging the decree. This Court vide order of even date today while upholding the findings disposed of the appeal while observing that although the decree does not construe according status of 2/3<sup>rd</sup> share as it had only set aside the decree of 1994 but under the garb of decree the decree-holder may not get the property mutated in the record as per relief sought in the claim for, the aforementioned share can always be determined in a suit for partition, for, by virtue of the judgment and decree passed by the Lower Appellate Court the status of the respondent-plaintiff viz-a-viz the appellant-defendant would be of co-owner. It is yet to be determined whether the vendor of the appellant could alienate the 27 kanals or less. It would be subject matter of adjudication in case either of the parties to lis claim the partition or separate possession. The Status of the appellant-defendant and respondent-plaintiff in view of the sale deed executed by Mange would be of co-sharer. It is made clear that the finding of trial Court in setting aside the sale deed would not come

in the way of the parties in the suit for partition, for it is yet to be adjudicated whether the Mange had 27 kanals and 5 marlas in his kitty or less.

With the aforementioned observations, while upholding the judgment and decree of the Courts below the present appeal is dismissed.

10.05.2018  
sonia

(AMIT RAWAL)  
JUDGE

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|--------------------------------|--------|
| Whether speaking/non-speaking? | Yes/No |
| Whether reportable?            | Yes/No |