

RSA-3437-2017 (O&M)

131

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

**RSA-3437-2017 (O&M)
Date of decision : 26.11.2018**

Gurnam Singh and others

... Appellants

Versus

Rajinder Kaur (deceased) through LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Abhishek Bajaj, Advocate
for the appellants.

AMIT RAWAL, J.

CM-8289-C-2017

For the reasons stated in the application, the application is allowed and the LRs of the respondent are ordered to be brought on record for the purpose of prosecuting the appeal.

RSA-3437-2017

The appellants-defendants have not been able to defend the suit for possession and permanent injunction to the extent of half share in respect of land measuring 21 kanals 2 marals by laying challenge to the sale deed dated 26.10.2010 executed by defendant Nos.1 to 5 in favour of defendant Nos.6 & 7 in respect of land measuring 24 kanals. It was alleged that Kapoor Singh and Gamdoor Singh were owner in joint possession. They sold the land to Chanan Singh and Pal Singh sons of Ganga Singh, which was assailed by the affected party i.e. children of Kapoor Singh alone, resulting into, a reversionary decree dated 22.11.1945. After the

RSA-3437-2017 (O&M)

death of Kapoor Singh and Gamdoor Singh in 1974 and 1975, the suit for possession was filed, which was decreed on 31.07.1979. However, Chanan Singh and Pal Singh, in an appeal, assailed the aforementioned judgment and decree, which was allowed by the lower Appellate Court on 11.05.1982, in essence, the suit was dismissed. However, this Court vide order dated 28.07.2004 in RSA No.2004 of 1982 decreed the suit, which was assailed before Hon'ble the Supreme Court and Special Leave Petition was dismissed on 05.09.2005. In view of joint ownership of the property, the defendants could not alienate the property in any manner.

The appellants-defendants opposed the suit on the premise that the plaintiff acquiesced of the ownership in favour of Kapoor Singh as the entire litigation started from 1941 till 2005, when the special leave petition preferred by Chanan Singh and Pal Singh was dismissed, therefore, the full ownership rights were acquired, in essence, the question of joint possession, therefore, did not arise.

Mr. Kanwaljit Singh, learned Senior Counsel assisted by Mr. Abhishek Bajaj, learned counsel appearing on behalf of the appellants-defendants submitted that in view of the specific stand taken in the written statement, no equity lied in favour of the plaintiff i.e. daughter of Gamdoor Singh to seek the joint possession. The suit was barred by law of limitation as the possession could be recovered only within a period of twelve years. Not a single piece of evidence had been brought on record to establish that the plaintiff ever joined with the defendants in espousing the cause of Gamdoor Singh and Kapoor Singh.

I am afraid the aforementioned argument is not sustainable, for, having succeeding in the suit for possession in **RSA No.2004 of 1982**, the

RSA-3437-2017 (O&M)

status of the property re-vested in favour of Gamdoor Singh and Kapoor Singh in joint ownership. The revenue entries did not reflect the exclusive ownership of Kapoor Singh. The progeny of Gamdoor Singh was espoused by the plaintiff and the successor of Kapoor Singh could not claim the exclusive possession. The entire pleadings before the previous round of litigation established Gamdoor Singh and Kapoor Singh to be in joint ownership. All co-sharers are owner of each and every inch of land, thus, in such circumstances, the suit for claiming joint possession in determining the half share could not be said to be barred by law of limitation.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Kanwaljit Singh to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

26.11.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**