

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA 6029 of 2017 (O&M)
Date of decision: 11.10.2018*Sumer Singh**.....Appellant*

vs

*Mahender (since deceased) and others**.....Respondents***Coram: Hon'ble Mrs. Justice Rekha Mittal**Present : Mr. Vishwajeet Singh, Advocate
for the appellant

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Rekha Mittal, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for declaration with consequential relief of injunction filed by the appellant/plaintiff that he is owner and in possession of agricultural land to the extent of ½ share measuring 116 kanal 13 marla, detailed in para 1 of the judgment of the trial Court was dismissed by the trial Court on 05.09.2014 and appeal preferred by unsuccessful plaintiff/appellant did not find favour with the Court of Additional District Judge, Faridabad.

The case set up by the plaintiff/appellant is that previously father of the plaintiff and grand father of defendants No. 1 to 3 were owner in possession of suit land. After his death, land was inherited by the plaintiff and father of defendants No. 1 to 3. Shri Dulli, father of the plaintiff had taken small agricultural loan from New Bank of India, NIT, Faridabad which was not to his knowledge. Plaintiff sold 17 kanal 2 marla land to Smt. Harpyari vide sale deed dated 13.05.1985 and 7 kanal 9 marlas to Shri Teeka Ram vide sale deed dated 24.06.1985 and handed over

possession to the purchasers. Subsequently, defendants No. 1 to 3 fraudulently, illegally and unlawfully purchased the total land in auction conducted in pursuance of the decree in favour of New Bank of India against loan of Rs.15,259.35 without knowledge and notice of the plaintiff. Smt. Harpyari and Shri Teeka Ram filed civil suit No. 353 dated 26.07.1989 challenging the auction sale which was decreed on 22.02.2001 and sale was held to be not binding upon right and interest of Smt. Harpyari etc. Plaintiff came to know about the fraud played by defendants No. 1 to 3 when he received notice in the case titled Smt. *Harpyari vs Dinesh and others*. Plaintiff asked the defendants about this fraud and threatened to take legal action but defendants No. 1 to 3 promised that they will execute sale deed of the disputed land in the name of the plaintiff. On 04.09.2006, defendants refused to execute the sale deed in favour of the plaintiff.

Defendants No. 1 to 3 filed the written statement, seriously contested claim of the plaintiff/appellant. They challenged that the suit is not maintainable as regular second appeal is pending before this Court i.e. RSA No. 2518 of 2004 and the appellant should have filed an appropriate application in the aforesaid RSA if he had any grievance to express. All other material averments of the plaint have been denied with prayer for dismissal of the suit

Counsel for the appellant would urge that as the sale qua share of Smt. Harpyari etc. has been set aside in the suit titled *Smt. Harpyari vs Dinesh and others*, the present appeal may be heard with RSA No. 2518 of 2004. Another submission made by counsel is that as respondents No. 1 to 3 promised to execute the sale deed in favour of the plaintiff qua his share of land, he did not initiate civil or criminal proceedings against respondents

No. 1 to 3 for the fraud committed by them. He would further apprise the Court that Shri Mahender defendant No. 1 appeared in the witness box and in his cross examine admitted that the loan from the Bank had been taken by his father Dharam Singh.

Indisputably, the plaintiff/appellant till date has not filed the suit to challenge auction conducted by the Court for sale of land in question for satisfaction of decree passed in favour of the New India Bank of India, NIT Faridabad. The present appellant was a party in the suit filed by Smt. Harpyari to challenge the auction qua land sold in her favour and Shri Teeka Ram, to the extent of 24 kanal 11 marla. In those proceedings, the sale has been set aside only to the extent of land purchased by Smt. Harpyari and Shri Teeka Ram and regular second appeal is pending before this Court in which operation of the judgment and decree passed in favour of Smt. Harpyari etc. has been stayed.

As the present appellant/plaintiff never challenged the sale of suit land in auction conducted by the Court for realization of decretal amount of bank, that has attained finality, the appellant cannot be heard to say that he is owner and in possession of half share in suit land measuring 116 kanal 13 marla. That being so, I do not find an error much less illegality in concurrent findings recorded by the Courts, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

11.10.2018
mohan bimbura