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

Date of decision : 20.03.2018

1.

RSA-720-2017 (O&M)

Raja Ram

... Appellant(s)

Versus

Badri Parshad and others

... Respondent(s)

2.

RSA-5307-2016 (O&M)

Raja Ram

... Appellant(s)

Versus

Badri Parshad and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Surinder Garg, Advocate
for the appellant(s).

AMIT RAWAL, J. (ORAL)

CM-1549-C-2017 IN RSA-720-2017

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the delay of 55 days in re-filing the appeal is condoned.

CM-1551-C-2017 IN RSA-720-2017

This is an application under Order 22 Rule 4 read with Section 151 of the Code of Civil Procedure for impleading the LRs of Muli

Devi/respondent No.10 and Mangtu Ram/respondent No.18.

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the LRs of Muli Devi/respondent No.10 and Mangtu Ram/respondent No.18 are ordered to be brought on record for the purpose of prosecuting the appeals.

MAIN CASES

This order of mine shall dispose of two appeals bearing **RSA No.720 of 2017** titled as **“Raja Ram V/s Badri Parshad and others”** and **RSA No.5307 of 2016** titled as **“Raja Ram V/s Badri Parshad and others”**, arising out of the decision rendered in Civil Suit No.573-1 of 2011 titled as “Badri Parshad V/s Raja Ram” at the instance of the appellant-defendant No.1/counter claimant.

The respondents-plaintiffs instituted the suit for declaration to the effect that notwithstanding absence of the entry in the revenue record, they being legal heirs of Sh. Jagmal son of Nand Ram, are owners in possession of 1/4th share of the land measuring 7 kanals 8 marals and with a consequential relief of permanent injunction seeking restraint order against defendant No.1 from illegally and unlawfully transferring the property, much less, dispossession and interference on the premise that Jagmal Ram was the owner of the land as he died intestate, having left behind the plaintiffs as legal heirs and therefore, they are liable to succeed to his estate by way of natural succession. It was averred that the name of Jagmal Ram had been deleted from the revenue record, when the copy of the jamabandi for the year 2004-05 was obtained in the year 2008 and Ranjit Ram, defendant, claimed to be owner of the suit land on the premise the the same

was exchanged with Raja Ram vide mutation No.3331.

In pursuance to the notice, defendant No.1 filed the written statement-cum-counterclaim by taking objection of concealment of material facts, abuse of process of Court, much less, estoppel and on merit, it was averred that the land in dispute was earlier owned by Nand Ram son of Anna Ram and after his demise, it was inherited by Laddu Ram, Sh. Jagmal Ram and Chanan Ram to the extent of 3/4th share and Krishan Lal, Hans Raj sons of Dallu Ram to the extent of 1/4th share and mutation No.1937 relating to the inheritance was sanctioned, which was reflected in the jambandi for the year 1974-75. Ladha Ram, Chanan Ram, Krishan Lal and Hans Raj, sold their share in the said land i.e. 5 kanals 11 marals to Bahadur Ram son of Kahna Ram and mutation No.1938 to this effect was entered and attested. In this way, Jagmal Ram was only shown to be owner to the extent of 1/4 share of land measuring 7 kanals 8 marlas. Bahadur Ram further sold the land measuring 5 kanals 11 marals in favour of Ranjit Ram son of Mangtu Ram and mutation No.2892 to this effect was entered. Jagmal Ram was the owner of the land measuring 1 kanal 11 marals to the extent of 1/4th share, who sold the same to Sohan Lal son of Pokhar Ram vide Vasika No.3201 dated 20.01.1978 and despite that fact, the land was earlier sold by Jagmal Ram in favour of Sohan Lal, the suit was not maintainable.

In the counterclaim, it was stated that possession of Mangtu Ram became adverse to the owner and possession was hostile and open in denial to true owner and declaration was sought on that ground.

On the basis of the pleadings, the trial Court framed the

following issues:-

1. *Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP*
2. *Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP*
3. *Whether the plaintiffs are guilty of concealment of material facts, if so, its effect? OPD*
4. *Whether the plaintiff is stopped to file the present suit by his own act and conduct? OPD*
5. *Whether the plaintiff has no cause of action to file the present suit? OPD*
6. *Whether the defendant No.1 counter claimant is entitled to the relief of declaration with regard to the ownership and possession of land measuring 7 kanals 8 marals? OPD No.1.*
7. *Whether the defendant No.1 counter claimant is entitled to the relief of possession as prayed for? OPD No.1*
8. *Whether the defendant No.1 counter claimant is entitled to the relief of permanent injunction as prayed for? OPD No.1.*
9. *Relief.*

On the basis of the preponderance of evidence, the suit was decreed and the counterclaim to the extent of restraining the plaintiff from forcible and illegal dispossession of defendant No.1, who was found to be in possession, was allowed, but the relief qua declaration was denied. In view of the aforementioned facts, two appeals were filed by the defendant(s), which have been dismissed. Hence two regular second appeals.

Mr. Surinder Garg, learned counsel appearing on behalf of the appellants-defendants submitted that both the Courts below have committed illegality and perversity, for, the simpliciter suit for declaration, in the

absence of possession and consequential relief, was not maintainable as admittedly, the defendant/counter-claimant is in possession, though he had claimed the declaration on the basis of the adverse possession. The possession had not been denied by the plaintiffs owing to the specific candid admission. Jagmal Ram was not the owner of the aforementioned suit land, for he had already sold the same vide sale deed of 1978, but the Courts below have not noticed the aforementioned fact by rejecting on the premise that it is pertained to some other property. The contents of the sale deed have completely been ignored, thus, there is an abdication and perversity and urges this Court for setting aside the judgments and decrees, under challenge by formulating the substantial questions of law as drawn in the memorandum of appeal.

I have heard the learned counsel for the appellant-defendant No.1, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Garg.

As and when the plaintiffs filed the suit for possession, the appellant/defendant/counter-claimant would have a right to take all legal pleas available under the law to contest the suit with regard to the maintainability, much less, limitation, but the fact of the matter is that the plaintiffs had confined their relief only viz-a-viz declaration and consequential relief of injunction, but since defendant/counter-claimant admittedly had been found to be in possession, his possession has been kept intact not to be interfered or dispossessed forcibly except in due course of law. Such injunction is most innocuous.

As regards the arguments of Mr. Garg with regard to the sale

deed, on going through the contents of the sale deed, it is evident that it did not pertain to the suit land, but was some other piece of land, therefore, it was found that Jagmal Ram was not having 1/4th share in the land in dispute. The ownership of Jagmal Ram to the extent of 1/4th share though had been admitted, but with a plea that it had been sold. Having failed to prove the same, the Courts below had rightly granted the injunction.

As an upshot of my observations, I do not find any illegality and perversity in the judgments and decrees rendered by both the Courts below as the same are based upon the oral and documentary evidence, much less, the arguments of Mr. Garg, do not enable me to form a different opinion than the one arrived at by the Courts below, accordingly, both the regular second appeals are dismissed.

20.03.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	✓ Yes/ No
Whether Reportable	✓ Yes/ No