

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

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**RSA-869-2017 (O&M)
Date of Decision : 05.09.2018**

Gaffar Appellant

Versus

Ayyub and others Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. J.S. Hooda, Advocate
for the appellant.

AJAY TEWARI, J. (ORAL)

By this appeal the appellant has challenged the concurrent judgments of the courts below dismissing a suit for declaration and permanent injunction filed by the appellant.

The case of the appellant was that the property in dispute was allotted to Lal Singh and Harbans Lal. Subsequently, allotment was made in favour of one Jom Khan. In that allotment, inadvertently the land which had earlier been allotted to Lal Singh and Harbans Lal was also included. When Jom Khan came to know this fact, he moved an application praying that the land which had earlier been allotted to Lal Singh and Harbans Lal had wrongly been included in the allotment letter issued to him and that he should be refunded the amount which he had deposited qua that land and other land allotted to him. Subsequent thereto, Jom Khan received refund of Rs.38/- as price paid for the suit property and possession of auctioned land excluding the suit property was given to him. As per the appellant, despite that fact the allotment letter

and the sales certificate was issued in favour of Jom Khan by including that land also whereas he had never been allotted that land and rather he got refund of the amount he deposited qua that land. The appellant thereafter purchased the land from those allottees verbally (in the year 1962-63). He further pleaded that as a result of the wrong sales certificate, now after so many years the respondents No.1 to 5 were threatening to interfere in his possession over the land and had in fact illegally sold the land to respondent No.6 in the year 2013.

The case of the respondents on the other hand was that the appellant was lying through his teeth. The land in dispute was validly allotted to Jom Khan; the sales certificate was validly issued in favour of Jom Khan; the land in dispute was validly mutated in the name of Jom Khan; the revenue record correctly reflected their possession over the land in dispute and that a valid sale transaction had taken place in favour of respondent No.6.

Both the courts below came to the conclusion that the appellant had not been able to prove his title. They noticed that there was no evidence of the sale in favour of the appellant. They further noticed that even though verbal sales were permitted at that time yet it was strange that the appellant never chose to get that sale incorporated in the revenue record by way of mutation. The courts below also noticed that as per the testimony of the appellant himself he would have been 6 to 7 years old at the time of the sale deed. The courts below also noticed that as per the testimony of PW-2, the sale had taken place in the year 1975-1977. Consequently, the courts below dismissed the suit and hence the appellant is before this Court.

Counsel for the appellant has argued that the respondent No.6 in his cross-examination had admitted the possession of the appellant and therefore even if the suit for declaration had to be dismissed, the prayer for permanent injunction could not have been denied.

I have gone through the testimony of respondent No.6. A perusal of the entire testimony including the entire cross-examination does not support the claim made by the counsel. The stray half admission referred to by the counsel is neither here nor there. Once there was no evidence that the appellant had any right, title or interest in the property his bald assertion that he was in possession cannot be proved by a smart question in the cross-examination. In the totality of circumstances, I am not persuaded that the judgments of the courts suffer from any infirmity.

Appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

September 05, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No