

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

RSA No. 931 of 2017 (O&M)

Date of decision : 13.09.2018

Jasvinder Kaur

....Appellant

V/s

Sher Singh & ors.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Ms. Sonia G. Singh, Advocate for the appellant.

RAJAN GUPTA J.

Present appeal has been preferred to impugn the judgments passed by the courts below decreeing the suit of the plaintiffs-respondents no. 1 to 3. Learned counsel for the appellant submits that findings of both the courts below are based on misreading of evidence and consequently not sustainable. According to her, findings in respect of recital of the sale-deed in question regarding transfer of specific Khasra number are based on wrong facts and against the evidence. Interference is, thus, called for in second appeal.

I have heard learned counsel for the appellant.

Brief factual background of the case is that plaintiffs-respondents no. 1 to 3 filed a suit for declaration and permanent injunction. It was averred that plaintiffs and defendants no. 2 to 4 were joint owners in possession of land measuring 286 Kanals 9 Marlas, as described in the plaint, each having 1/6th share. Defendants no. 2 to 4 by way of registered sale-deed dated 27.04.2012 sold their 1/6th share of the suit land to defendant no. 1 (appellant herein). It was mentioned in the sale-deed that possession

has been delivered to defendant no. 1 in respect of seven specific khasra numbers in Rect. No. 40 i.e. Killa No. 2/2, 3, 4, 5, 6 min, 7 & 12, having total area of 47 kanals 15 marlas. As defendants no. 2 to 4 were not in exclusive possession of said khasra numbers, defendant no. 1 could not take actual, physical possession of any specific khasra number of the suit land on the strength of the said sale-deed. Even in the revenue record also, respondent no. 1 had not been shown in possession of any specific khasra number of the suit property. By taking wrong recital in the sale-deed, defendant no. 1 wanted to take illegal and forcible possession of the aforesaid specific khasra numbers. Left with no option, plaintiffs preferred the instant suit. Upon notice, defendants contested the suit and denied the averments made in the plaint by filing the written statement. Defendants no. 2 to 4 took the stand that they being in exclusive possession of the suit land sold the same to defendant no. 1 vide sale-deed dated 27.04.2012. Other averments made in the plaint were also denied and prayed for dismissal of the suit. The trial court on the basis of evidence on record decreed the suit of the plaintiffs. It held that recital contained in sale-deed regarding sale of specific khasra numbers in favour of defendant no. 1 to be factually incorrect and legally not sustainable. Perpetual injunction restraining defendant no. 1 from taking possession of any specific khasra number except by way of partition was also granted. Aggrieved, defendant no. 1-appellant preferred an appeal. However, findings arrived at by the trial court were affirmed by the first appellate court and appeal was dismissed. I find no infirmity with the findings arrived at by courts below. Sufficient material has been brought on record to establish that suit land was jointly owned by plaintiffs and defendants no. 2 to 4. As the suit land was joint, recital in the sale-deed

not warranted. The questions of law as proposed in grounds of appeal are merely questions of fact which have already been adjudicated upon. I find no merit in the appeal which would warrant interference in the findings of the courts below. The appeal is, thus, without any merit and is hereby dismissed.

CM No. 2077-C of 2017

As the main appeal has been dismissed on merits, no order needs to be passed in the instant application.

September 13, 2018

Ajay

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No