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

**RSA-77-1989 (O&M)
Date of decision : 21.05.2019**

Mohan Singh

... Appellant(s)

Versus

Piare Lal

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Jaswal, Advocate
for the appellant.

Mr. K.G. Chaudhary, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is, at the instance of the appellant-plaintiff, directed against the concurrent findings of fact, whereby his suit bearing Civil Suit No.21 of 1986 (hereinafter called 'first suit') for declaration claiming ownership, in respect of the suit land measuring 10 kanals 10 marlas, bearing different khasra numbers, having purchased from Banta Singh, has been dismissed by the Courts below and the injunction suit of Piare Ram bearing Civil Suit No.240 of 1986 (hereinafter called 'second suit'), has been decreed.

Both the parties filed the aforementioned suits.

The appellant-plaintiff Mohan Singh sought the declaration to be owner of land measuring 10 kanals 10 marlas including 8-½ marlas i.e. half share of the suit land measuring 17 marlas, situated in Village

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Marnayian Khurd and had been in possession of the land purchased from defendant No.3-Banta Singh, vide registered sale deed dated 28.03.1961 including Khasra Nos.1345, 1389, 1498, 1524, 1506, 1341.

The defendants, in the first suit, raised the objection qua maintainability and alleged that they were in possession of the land having purchased from Banta Singh regarding 8-½ marlas as total land measuring 17 marlas was bearing khasra No.1524/1118. Sucha Singh and Mohan Singh were owner of the half share and remaining 8 ½ marlas was of Banta Singh. Piara Lal purchased 8 ½ marlas from Sucha Singh and Mohan Singh, vide registered sale deed, whereas 8-½ from Banta Singh and became absolute owner.

Both the parties led extensive evidence in support of their respective cases.

The trial Court noticing the sale deeds Ex.D1 to Ex.D3 of the defendants regarding sale of the land from Sucha Singh, Banta Singh and Mohan Singh, decreed the second suit and dismissed the first suit. The appeal preferred by the appellant-Mohan Singh was also dismissed.

Mr. G.S. Jaswal, learned counsel appearing on behalf of the appellant submitted that the lower Appellate Court being the last court of fact and law, in para No.11 of the impugned judgment, incorrectly noticed the khasra No.1524 as 2415/1118 and non-suited the appellant-plaintiff that in the previous judgment and decree dated 12.12.1974 (Ex.D-9) filed against Banta Singh, whereby both Mohan Singh and Mulla were held to be joint co-owner of land measuring 10 kanals 10 marlas bearing Khasra No.1390/1118/1-2 min (8-5), 1391/1118/1-2 (2-5), thus, there is an abdication. The appellant-plaintiff has been deprived of the examination of

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the evidence by the lower Appellate Court being the last Court of fact and law.

Per contra, Mr. K.G. Chaudhary, learned counsel appearing on behalf of the respondent submitted that there is no illegality and perversity in the concurrent findings. The plaintiff has not been able to prove the ownership with regard to khasra No.1524/1118. In fact, it was khasra No.2415/1118 and not 1524/1118, thus, the suit has rightly been dismissed by the Courts below.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that it is a fit case where the matter is required to be revisited.

It would be apt to reproduce para Nos.10 and 11 of the lower Appellate Court, which read as under:-

"10. It is the common ground that vide the registered sale deed dated March 28, 1961 (Ex.P1), Banta Singh (respondent) transferred the land measuring 10 kanals 10 marlas for a sum of ₹ 2,000/- in favour of Mohan Singh (appellant). No doubt area comprised in the revenue Kh. No.2415/1118 was included in the land measuring 10 kanals 10 marlas (ibid) But, apart from the revenue kh. Nos., comprising the sold land measuring 10 kanals 10 marlas description thereof (sold land) was mentioned therein (sale deed) with the aid of boundaries as well. It too is conceded that except the land measuring 10 kanals 10 marlas the appellant (Mohan Singh) never purchased any other land from Banta Singh (respondent). In this behalf, there was the sworn statement of Mohan Singh appellant (PW2) as well as that of his witness Maluk Singh (PW1) It ought be noticed that Mohan Singh (appellant) instituted a suit it being the Civil Suit No.157/73 again Banta Singh (respondent) and one Mula Singh for declaration to the effect

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that he was the owner in possession of the land measuring 10 kanals 10 marlas comprised in the revenue Kh. No.1390/1118/1-2 min (8-5) 1391/1118/1-2 (2-5) and the said land was described therein with the help of boundaries. Suit No.157/73 (ibid) was decided on December 12, 1974, vide the evident dated judgment (Ex.D9), Its perusal revealed that the suit's claim to the ownership of the land measuring 10 kanals 10 marlas was bounded on the registered sale deed dated March 28, 1961 executed by Banta Singh (respondent) for a sum of ₹2,000/- and the appellant Mohan Singh's suit claim to the effect was upheld. In other words, he (appellant) was said to be in exclusive possession of the land measuring 10 kanals 10 marlas as joint owner and Mula Singh etc. were restrained from interfering in his possession thereof. Nor it is disputed that the judgment (Ex.D9) was conclusive.

11. Notice a worthy point is that in the suit No.157/73 (ibid) it was not alleged that the land measuring 17 marlas comprised in the revenue Kh. No.2415/1118 was included in the land measuring 10 kanals 10 marlas which was purchased by the appellant (Mohan Singh) from Banta Singh (respondent vide the sale deed dated March 8, 1961 (Ex.P1) for a sum of ₹2000/-. In fact in that suit the claim of ownership based on the sale deed dated March 28, 1961 (Ex.P1) was in respect of land different from and distinct than the suit land measuring 17 marlas comprised in the revenue Kh. No.2415/1118. And also it was upheld decreed in his (appellant) favour vide the judgment dated December 12, 1974 (Ex.D9). Needless to say that his (appellant) claim to the ownership of one half share in the suit land measuring 17 marlas on the basis of the sale deed dated March 28, 1961 (Ex.P1) was wholly baseless and unfounded undoubtedly, it was altogether inconsonant with his claim pleaded as well as granted in the suit No.157/73 (ibid)."

On examination of the sale deed dated 28.03.1961 (Ex.P1), the appellant-plaintiff has purchased from khasra No.1345, 1389, 1498

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including 1524, 1506, 1341 and as per decree dated 12.12.1974 (Ex.D9), both Mohan Singh-plaintiff and Mulla were held to be joint co-owner one Mulla was held to be owner of land measuring 10 kanals 10 marlas bearing Khasra No.1390/1118/1-2 min (8-5), 1391/1118/1-2 (2-5). The lower Appellate Court has referred to khasra No.2415/1118, which is not subject matter of any sale deeds, either of the plaintiff or of the defendants i.e. Ex.D1 and Ex.D2.

Keeping in view the aforementioned facts, the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law being suffered from illegality and perversity and the same is hereby set aside and the matter is remitted to the lower Appellate Court to decide the controversy afresh, as expeditiously as possible preferably within a period of eight months from the date of receipt of the certified copy of this order.

Original record be sent back.

The parties or through their counsel are directed to appear before the lower Appellate Court on 30.07.2019.

With the aforesaid observations, the present regular second appeal is disposed of.

21.05.2019

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**