

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

RSA No.4505 of 2019 (O&M)

Date of Decision: November 01, 2019

Ram Mehar

...Appellant

Versus

Saroj Devi and others

...Respondents

**CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR**

Present:- Mr. Ramesh Hooda, Advocate  
for the appellant.

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**JAISHREE THAKUR, J. (Oral)**

**CM-12733-C-2019**

1. This is an application that has been filed seeking condonation of delay of 78 days in filing the appeal on the grounds that the appellant is aged about 61 years of age and is suffering from various ailments, due to which delay in filing the appeal has occurred.

2. For the reasons mentioned in the application, the same is allowed and delay of 78 days in filing the appeal is condoned.

**CM-12732-C-2019**

1. For the reasons mentioned in the application, the same is allowed and delay of 135 days in re-filing the appeal is condoned.

**RSA-4505-2019**

1. This is an appeal that has been filed seeking to challenge the

judgment and decree dated 08.10.2015 passed by the lower court, dismissing the suit of the appellant-plaintiff (henceforth called as 'the appellant') as well as judgment and decree dated 19.09.2018 passed by the first Appellate Court whereby, the appeal filed the appellant also stood dismissed.

2. Briefly, the facts are that the appellant herein instituted a suit seeking the relief of declaration to the effect that he is owner in possession of the land compromised in Khewat No.438, Khatoni No.520, measuring 1 kanal 16 marlas (Gair Mumkin) situated in the revenue estate of village Shamlo Kalan, Tehsil and District Jind as per jamabandi for the year 2005-2006 and respondents No.1 to 4/defendants No.1 to 4 (henceforth called as 'respondents No.1 to 4') have no concern with the suit land. It was stated that the subsequent entries in the revenue record like mutation No.1887 dated 16.02.2009, mutation No.1923 dated 26.09.2009 and mutation No.1929 dated 30.11.2009 regarding the suit land are illegal, null and void and should be set aside. Consequently, proforma respondent No.5-defendant No.5 (henceforth called as 'respondent No.5') had no right, title or authority to sell the suit land to respondent No.1 and similarly, respondent No.1 had no right, title or authority to sell the suit land to respondents No.2 to 4 in any manner. In the civil suit, the appellant averred that he is sole owner in possession of the suit land and has 3/4<sup>th</sup> share in other agricultural land measuring measuring 122 kanals 17 marlas as per jamabandi for the year 2005-2006. It was submitted that respondent No.5 sold her 1/4<sup>th</sup> share out of agricultural land measuring 122 kanals 17 marlas to respondent No.1 vide sale deed No.4100 dated 20.01.2009 and mutation No.1887 dated

16.02.2009 was entered and attested in favour of respondent No.1. Thereafter, on the basis of sale deed No.4100 dated 20.01.2009, respondent No.1 sold her 104/831 share to respondents No.2 and 3 vide sale deed No.1534 dated 03.08.2009 and mutation of sale deed was entered and attested vide mutation No.1923 dated 26.09.2009. Respondent No.1 further sold her 52/831 share to respondent No.4 vide sale deed No.1613 dated 11.08.2009 and mutation to this effect was also entered and attested vide mutation No.1929 dated 30.11.2009. It was alleged that respondent No.5 never sold the suit land and as such, respondent No.1 was not competent to sell the suit land, vide the above-mentioned sale deeds. It was claimed that all the subsequent entries in the revenue record on the basis of above-mentioned sale deeds are illegal, null and void and liable to be set aside. It was submitted that respondents No.2 to 4 are threatening to dispossess him from the suit land, in which they are having no right, title or interest.

3. Upon notice, respondents No.1 to 4 appeared and filed their joint written statement on 09.01.2012 taking the preliminary objections as to maintainability, cause of action, locus standi, jurisdiction, non-joinder of parties etc. On merits, it was denied that the appellant is owner in possession of the suit land. It was averred that respondent No.1 had purchased the agricultural and non-agricultural land from respondent No.5 correctly. It was alleged that the appellant has no right, title, interest, authority or concern with the suit land. It was submitted that respondent No.1 had purchased the suit land to the extent of 1/4<sup>th</sup> share (i.e. total share of respondent No.5) out of total land measuring 124 kanals 13 marlas for a valuable consideration of ₹ 19,47,000/- vide registered sale deed No.4100

dated 20.01.2009 and since then, respondent No.1 is absolute owner in possession of the same. Thereafter, respondent No.1 correctly sold the suit land to respondents No.2 and 3 as well as respondent No.4. It was claimed that respondent No.5 had every right to sell the suit land as well as other land as per her share in the said joint khewat, as such, revenue entries are correct. Remaining averments made in the plaint were categorically denied.

4. Upon notice, respondent No.5 appeared and suffered a statement whereby, she adopted the written statement filed on behalf of respondents No.1 to 4.

5. Replication was not filed. From the pleadings of the parties, issues were framed and evidence was led by both the parties. On appreciating the evidence, the lower court dismissed the suit of the appellant, against which the appellant filed an appeal, which was too dismissed. Now, the judgments and decrees passed by both the courts below have been challenged in this regular second appeal.

6. Mr. Ramesh Hooda, learned counsel appearing on behalf of the appellant argues that both the courts below have not correctly appreciated the evidence. It is contended that sale deed Ex.D1 executed by respondent No.5 in favour of respondent No.1 did not find mentioned the killa number of gair mumkin plot. It is also argued that DW3 Dharambir (respondent No.3) admitted in his cross-examination that they have not taken possession of the Abadi land. It is submitted that even DW2 admitted in his cross-examination that in the sale deed, there is no mention regarding plot measuring 270 sq. yards.

7. I have heard learned counsel for the appellant and have also

gone through the case file.

8. The lower court, while dismissing the suit of the appellant, has observed that the appellant has failed to substantiate his case that he is sole owner in possession of the suit land or that the revenue record, such as, mutations entered in favour of respondents No.1 to 4 respectively are illegal, null and void. The findings recorded by the lower court were affirmed in appeal by the first Appellate Court.

9. The case, as set up by the appellant herein is that he is owner in possession of the suit land and consequently, sale of suit land by respondent No.5 in favour of respondent No.1 and on that basis, further sale of the suit land by respondent No.1 in favour of respondents No.2 to 4 respectively is illegal, null and void. In order to prove his case, the appellant stepped into the witness box and produced on record jamabandi for the year 2005-2006 as Ex.P1 and copy of mutations sanctioned in favour of respondents No.1, respondents No.2 and 3, and respondent No.4 respectively as Ex.P2 to Ex.P4. Copy of sale deeds, which were executed by respondent No.5 in favour of respondent No.1 and subsequently by respondent No.1 in favour of respondents No.2 and 3, and respondent No.4 respectively were produced on record by the appellant as Ex.P5 to Ex.P7. The copy of the said deeds were also produced on record as Ex.D1 to D3 by the respondents.

10. As per the settled proposition of law, it was for the appellant to prove his case by standing on his own legs and as already stated, except for himself, he did not examine any other witness to corroborate his case. There is no evidence available on record, which supports the case of the appellant except his bald assertions to the effect that he is owner in

possession of the suit land and that the subsequent revenue record is liable to be set aside. During his cross-examination while appearing as PW1, the appellant showed his ignorance to various material questions put to him and admitted that he cannot even read his affidavit. On the other hand, DW1 Saroj Devi (respondent No.1) stood the test of cross-examination and deposed in the line of her assertions that she purchased the suit land from respondent No.5 for a valuable consideration of ₹ 19,47,000/- along with Gair Mumkin Abadi land vide sale deed dated 20.01.2009 and mutation No.1887 to this effect was sanctioned in her favour and since then, she is absolute owner in possession thereof. She also testified to further sale of the suit land by her in favour of respondents No.2 and 3, and respondent No.4 respectively. Version of DW1 Saroj Devi is fully corroborated by DW2 Sawtanter Anand and DW3 Dharambir. Nothing fruitful could be extracted during the cross-examination of DW1, DW2 and DW3, which goes in support of the case of the appellant. From the oral as well as documentary evidence available on record, it is made out that the appellant has miserably failed to prove his case and the evidence led by the respondents in support of their case has gone un-rebutted. Under these facts and circumstances of the case, this court is of the considered opinion that both the courts have rightly dismissed the suit as well as appeal of the appellant.

11. In view of the above, this court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellant-plaintiff, which has no merit.

12. Dismissed.

November 01, 2019  
*vijay saini*

(JAISHREE THAKUR)  
JUDGE

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No