

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

**RSA No.2202 of 1996 (O&M)
Date of decision: 23.07.2019**

Chain Singh

.....Appellant

Versus

Nirmal Singh and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: None for the appellant.

Mr. Gurmeet Sagoo, Advocate,
for respondent No.1.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 15.05.1996 passed by the District Judge, Hoshiarpur, dismissing an appeal filed by plaintiff-appellant (hereinafter referred to as 'the plaintiff') against the judgment and decree dated 21.01.1994 passed by the Sub Judge, Ist Class, Garhshankar, whereby suit filed by him (plaintiff) for declaration, has been dismissed.

Chain Singh-plaintiff (appellant herein) (hereinafter referred to as 'the plaintiff') filed a suit for declaration to the effect that Jagat Singh and Banta Singh were two brothers and both of them owner and possessed 29 Kanals 12 Marlas of land each. As per plaintiff, Banta Singh had executed a Will in respect of his half share in favour of defendant No.1 Nirmal Singh, whereas Jagat Singh had executed a Will dated 21.01.1976 regarding his share of land in favour of the plaintiff. Jagat Singh died on 08.07.1981 and after his death, he (plaintiff) became owner of the share of Jagat Singh.

Therefore, plaintiff claims to be owner of the land measuring 29 Kanals 12 Marlas belonging to Jagat Singh on the ground that Jagat Singh had sold the said land in favour of Lachhman Singh. It was further stated that plaintiff had filed a suit for pre-emption, which was decreed on 06.04.1959. Later on, sale consideration was returned by the plaintiff to Lachhman Singh. However, defendant No.1 alleged that he was also owner of the land left by Jagat Singh to the extent of $\frac{1}{2}$ share on the ground that he had paid half of the pre-emption money along with the plaintiff at the time when his suit was decreed on 06.04.1959. Hence, the suit.

Upon notice, defendant (respondents) filed written statement stating therein that at the time of execution of the alleged Will in favour of the plaintiff, Jagat Singh was not owner of any land because Jagat Singh had sold entire property to Lachhman Singh before his death. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is owner in possession of $\frac{1}{2}$ share of 59 Kanals 4 Marlas of land in the suit land as alleged? OPP
2. If issue No.1 is not proved, whether the plaintiff is entitled to the possession of the said land as alleged? OPP
3. Whether the suit is within time? OPP
4. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPD
5. Whether Jagat Singh had executed a valid Will in favour of the plaintiff on 21.01.1976 as alleged? If so, its effect? OPP
6. Whether the plaintiff is estopped from filing the suit as alleged? OPD
7. Whether the defendant has become owner by adverse

possession as alleged? OPD

8. Whether the plaintiff alone paid the pre-emption money to Lachhman Singh, vendee of Jagat Singh, of the suit land in the pre-emption suit, as alleged? OPP
9. Whether the plaintiff alone had filed a pre-emption suit against Lachhman Singh and a decree was passed in his favour alone on 06.04.1959 as alleged? OPP
10. Whether Hukam Singh filed a money suit and obtained decree against Jagat Singh on 10.12.1958? OPP
11. Whether the pre-emption decree alleged in issue No.8 was held to be collusive decree in the civil suit decided on 03.05.1961 as alleged? OPP
12. Whether the plaintiff has made unauthorised amendments as alleged? OPD
13. Relief.

Trial Court, after hearing learned counsel for the parties, dismissed the suit. Appeal against the said judgment also met the same fate.

Both the Courts have given a concurrent finding of fact that Jagat Singh, father of the plaintiff and defendant No.1, had sold his entire land to Lachhman Singh in the year 1959 and this sale was pre-empted by Chain Singh-plaintiff vide decree dated 06.04.1959. Thereafter, agreement Ex.D1/A was effected between the plaintiff and defendant No.1, whereupon defendant No.1 had paid half of the pre-emption amount to the plaintiff. Thereafter, mutation was sanctioned in favour of both the parties to the extent of ½ share each qua the land left by Jagat Singh. The entries were further incorporated in the Jamabandis for the following years. The plaintiff had neither challenged the agreement Ex.D1/A nor the entries made in the revenue record showing that he (plaintiff) and defendants were owners to the extent of half share each in the property left by Jagat Singh. Since Jagat Singh had already sold his entire land, there was no occasion for him to

execute a Will dated 21.01.1976 in favour of the plaintiff. The lower appellate Court has further observed that after the evidence of defendants was closed on 07.10.1993, plaintiff was given as many as 10 opportunities to lead evidence in rebuttal and finally, evidence of the plaintiff was closed on 16.12.1993. Hence, plaintiff-appellant Chain Singh led no evidence to rebut agreement Ex.D1/A as well as entries of mutation in the revenue record.

After going through the impugned judgments, it is apparent that agreement Ex.D1/A has never been challenged by the plaintiff and pursuant to this agreement, entries in the revenue record, had been made, whereby half share had been given to the plaintiff. In view of the said fact, suit filed by the plaintiff (appellant) has been rightly dismissed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgment warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed.

23.07.2019
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No