

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

RSA No.1101 of 2005 (O&M)

Date of Order: 27.02.2019

Harbhajan Singh

..Appellant

Versus

Jagdish Chander and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.K.Garg, Advocate,
for the appellant.

Mr. V.B.Aggarwal, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below. Although, learned first appellate court has slightly modified the judgment and decree passed by the learned trial court which does not have any material effect on the result of the litigation.

Niranjan Dass was owner of land measuring 9 kanals and 7 marlas comprised in Rectangle No.140. He sold to Sita Ram, prior in point of time, land measuring 8 kanals 7 marlas which is equivalent to 5 bighas vide registered sale deed dated 14.12.1960, thus, he was left with only 1 kanal land. He sold 1 kanal 7 marlas land to the father of the plaintiff vide registered sale deed dated 13.06.1968. Sita Ram, the first vendee, also sold 8 kanals 7 marlas land to respondent-defendant-Jagdish Chander vide sale deed dated 14.07.1967.

Plaintiff now through the present suit for permanent injunction claims his right, title or interest on the land measuring 1 kanal 7 marlas.

Both the courts on appreciation of evidence have found that

Niranjan Dass, the vendor of the plaintiff was only left with 1 kanal land and, therefore, he could not sell more than what he had.

This court has heard learned counsel for the appellant at some length and with his able assistance gone through the judgments passed by both the courts below and the record.

Learned counsel for the appellant submits that in a suit for injunction question of title was not required to be gone into and therefore the plaintiff being in possession was entitled to injunction. The argument of learned counsel has been critically analyzed, however, find no substance therein. The suit, no doubt, was for permanent injunction, however, issue no.1 framed by the trial court reads as under:-

“1. Whether the plaintiffs are owners in possession of the land mentioned in para No.1 of the plaint?OPP”

It is apparent that the plaintiff as well as defendant contested the suit main on issue no.1. The suit property is 1 kanal and 7 marlas.

Therefore, the argument of learned counsel that the suit was merely a suit for injunction has no substance. In fact, the declaration with regard to ownership was sought, although, in an indirect manner. Both the parties were alive to the issue framed and led evidence and suffered judgment, now the plaintiff cannot turn around and asserts that it was mere suit for injunction.

Learned counsel for the appellant, although, made sincere attempt, however, could not persuade this court to take a different view in view of the facts which have been noted above. Plaintiffs can claim right better than their vendor. Once it is established that Niranjan Dass, the vendor of the plaintiff was having only 1 kanal land left to his share, he

could not transfer more than what he had. Hence, there is no ground to interfere.

The regular second appeal is dismissed.

February 27, 2019
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(ANIL KSHETARPAL)
JUDGE

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