

In the High Court of Punjab and Haryana at Chandigarh

**RSA- 5317 of 2019 (O&M)
Date of Decision: 28.11.2019**

Harpal Singh (since deceased) through Lrs.

---Appellant

versus

Bhag Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Nakul Sharma, Advocate
for the appellant**

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for possession filed by the respondents-plaintiffs by staking claim to the suit house on the basis of sale deed dated 6.1.2010 purported to be executed by Sh. Joginder Singh in favour of the respondents and their brother Satpal Singh, was decreed by the trial court vide judgment and decree dated 19.3.2016 that came to be affirmed in appeal by the Additional District Judge, Fatehgarh Sahib vide judgment and decree dated 24.5.2019.

Counsel for the appellant-defendant, in line with the averments raised in para 6 of the grounds of appeal filed before the First Appellate Court, would argue that Gurnam Singh was one of the co-owners in total land measuring 15 marlas and he sold his share to the extent of 2½ marlas vide sale deed No. 1273 to Joginder Singh and 2½ marlas through sale deed

No. 1272 to Harpal Singh on 10.7.1996 and subsequent to execution of those two sale deeds,, Gurman Singh remained owner of $\frac{3}{4}$ marlas of land and he executed another sale deed No. 1813 dated 1.9.1997 in favour of Harpal Singh in respect of $1\frac{1}{2}$ marlas whereas Gurnam Singh was neither owner nor in possession of $1\frac{1}{2}$ marlas of land at the time of execution of sale deed, therefore, he sold more than his share without any authority. Sale deed No. 2220 dated 30.8.2001 is null, void and has no value in the eye of law. It is further argued that since the appellant-defendant is one of the co-owners of land comprising khasra No. 471 and joint land has not been partitioned amongst co-sharers, the courts have grossly erred by decreeing suit of the respondents-plaintiffs for possession of the suit property. It is further argued that demarcation was not conducted as per rules and regulations, so admitted by the a revenue official PW4, examined by the plaintiffs.

I have heard counsel for the appellant and perused the paper book particularly the judgments impugned.

There is no dispute raised by the appellant-defendant that suit property was previously owned by his father Joginder Singh. Sale deed executed by Joginder Singh in favour of respondents-plaintiffs and their brother Satpal Singh is marked as an exhibit.

Counsel, in response to a query, has fairly conceded that facts sought to be raised in para 6 of the grounds of appeal were not a part of pleadings or subject matter of adjudication before the trial court. As per settled position in law, it is not open for a litigant to raise factual controversy for the first time in appeal because if such a recourse is allowed to be adopted, the contesting party would be taken by surprise and it may

lead to travesty of justice. That being so, appellant cannot derive any advantage to his contention from the facts raised in para 6 of the grounds of appeal before the First Appellate Court. The suit property is a house and is described with boundaries with letters 'ABCD' in the site plan. Counsel has failed to point out if appellant raised any objection/dispute with regard to identity of the suit property. In the given circumstances, demarcation of the suit property or demarcation report being not in consonance with the rules/regulations assumes no significance. Counsel has failed to advance any convincing arguments that consistent findings recorded by the courts suffer from an error much less perversity that would call for intervention.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay of 65 days in refiling the appeal is of academic relevance.

(Rekha Mittal)
Judge

28.11.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No