

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.3721 of 2007 (O&M)

Date of decision: 19.03.2019

Sultan Singh

..... Appellant

Versus

Raj Kumar and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Deepak Vashishth, Advocate
for the appellant.

Mr. Ajay Kansal, Advocate
for respondent No.1.

ANIL KSHETARPAL, J.

Plaintiff-appellant is in the regular second appeal against the judgment passed by the First Appellate Court reversing the judgment of the trial Court.

The plaintiff has basically challenged the correctness of sale deed executed by defendant No.2-Hoshiar Singh in favour of defendant No.1-Raj Kumar dated 30.10.1996. It is claimed by the plaintiff that sale by Hoshiar Singh is in excess of his share.

Lachhman Dass was having five sons namely Saheb Ram, Shri Ram, Hoshiar Singh, Om Parkash and Phool Singh. The family was owner of 118 kanals and 14 marlas. The family divided the entire land in 6 shares. The 5 shares were given to 5 sons i.e. one each whereas 6th share was kept by Lachhman Dass. Thus, Hoshiar Singh became owner of 19 kanals 15 marlas of land. Initially, there was a litigation filed by Smt. Diksha against

Lachhman and vide judgment and decree, 7 kanals 19 marlas land went out of the fold of the family. The share of Hoshiar Singh thus got reduced by 1 kanal 12 marlas which would be clear from mutation No.364. Thereafter, there was a judgment and decree dated 27.07.1987 with respect to 12 kanals land in favour of Rajender. Thereafter, Hoshiar Singh sold the land measuring 3 kanals 12 marlas in favour of Rajinder Prashad vide sale deed dated 28.06.1990. The plaintiff claims that as per family settlement dated 15.09.1995, the land measuring 2 kanals 11 marlas has come to his share from Hoshiar Singh. The plaintiff is nephew of Hoshiar Singh being son of Sahib Ram. Learned First Appellate Court has found that mutation No.364 sanctioned on the basis of judgment and decree dated 27.07.1987 was in fact on account of exchange and this parcel of land had come back through a further exchange to Hoshiar Singh vide mutation No.417 entered and sanctioned on 11.09.1989.

Still further, Ex.P-1, the alleged family settlement is neither a family settlement nor a partition deed. In fact, it is an instrument of transfer with regard to land measuring 2 kanals 11 marlas. This transfer has been made in lieu of some payment which was allegedly payable to Sultan Singh by Hoshiar Singh. The transfer of immovable property worth more than Rs.100/- is not permissible through an unregistered document.

Learned counsel appearing for the appellant submitted that Hoshiar Singh was not left with any share in the joint property and therefore, the sale deed dated 30.10.1996 is liable to be set aside. However, learned counsel has overlooked mutation No.417 Ex.D-7 on the file which proves that the aforesaid land measuring 12 kanals had come back to Hoshiar Singh on the basis of a subsequent exchange. The correctness of mutation Ex.D-7 has never been challenged by Rajinder Prashad. Still further, defendant No.1

is not member of the family. He is a purchaser for valuable consideration.

Hence, there is no ground to interfere.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Appeal is dismissed.

19.03.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No