

RSA-2786-2012 (O&M)

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

RSA-2786-2012 (O&M)

Date of decision : 06.03.2019

Kulwinder Kaur

... Appellant

Versus

Surjit Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Munish Gupta, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

CM-7475-C-2012

For the reasons stated in the application, which is supported by an affidavit, delay of 07 days in filing the appeal is condoned.

CM stands disposed of.

MAIN CASE

The appellant-defendant No.1 is, in the present regular second appeal, against the concurrent findings of fact, whereby the suit of the respondent-plaintiff for declaration to be owner in possession to the extent of 1/6th share in respect of land measuring 1 kanal 19 marlas, situated in Village Nangal Choran, Tehsil Garhshankar, District Hoshiarpur with consequential relief of permanent injunction, has been decreed by the trial Court affirmed in appeal.

The plaintiff claimed the declaration, aforementioned, on the premise that he along with his brothers Baldev Singh and Sukhdev Singh

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were owner of $\frac{1}{2}$ share in the land measuring 3 kanals 17 marlas. The plaintiff was permanently settled in U.K. He visited India in the month of February 2000 and never sold the land out of the suit property to any person. Defendant No.1 claimed himself to be co-sharer to the extent of half share i.e. in the suit land 1 kanal 19 marlas comprised in Khasra Nos.164, 165, 168, 169 and threatened the plaintiff to forcibly dispossess him. On obtaining the latest jamabamdi, was astonished to notice that revenue record reflected the wrong entries his share was recorded $\frac{1}{12}$ th instead of $\frac{1}{6}$ th share.

Defendant No.1 opposed the suit by raising the objections qua *locus standi*, limitation, bad for non-joinder of the parties, but admitted the plaintiff to be NRI. She claimed herself to be *bona fide* purchaser from Kundan Singh, whose father, Gurbachan Singh had, the share, in the property

On the basis of the evidence brought on record, the trial Court decreed the suit. The appeal laid before the lower Appellate Court was also dismissed.

Mr. Munish Gupta, learned counsel appearing on behalf of the appellant-defendant No.1, submitted that the Courts below have abdicated in not appreciating the fact that the appellant is the *bona fide* purchaser for a valuable consideration and after making reasonable inquiry i.e. inspection of the revenue record, her vendor was found to be owner of $\frac{1}{12}$ th share, therefore, purchased the property. The finding arrived at by the Courts below that Gurbachan Singh had no share, is totally off the record. No issue with regard to the *bona fide* purchaser was framed. In the absence of any challenge to sale deed dated 02.08.2000, the suit was not maintainable.

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Jamabandi for the year 1976-77 and 1998-99 (Ex.P4), has been misread, thus, there is abdication.

I have heard learned counsel for the appellant-defendant No.1, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Munish Gupta, for the simple reason that by noticing the revenue record, it has been established that Gurbachan Singh, father of Kundan Singh, vendor of the defendant, had no share in the property, as she had already sold, but owing to the error in the entry, taking the advantage, Kundan Singh parted with the property. The previous judgment reflected the respondent-plaintiff to be 1/6th instead of 1/12th. Revenue record carried a presumption of truth unless rebutted/controverted. No evidence has been placed on record to establish the ownership, except jamabandi, which was not a correct one.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Munish Gupta, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination.

Resultantly, the second appeal is dismissed.

06.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**