

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

RSA No.3899 of 2012 (O&M)

Date of Decision: March 12, 2019

Amrik Singh

.....Appellant

Versus

Devo & others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Ms. Rajni Maurya, Advocate for
Mr. Naveen Batra, Advocate for the Appellant.

Mr. B.S.Sewak, Advocate for Respondent No.1.

SUDIP AHLUWALIA, J.

This Appeal has been preferred against the impugned Judgment and Decree passed by the Ld. Addl. District Judge, Hoshiarpur in Civil Appeal No.38 of 15.12.2009 dated 10.5.2012, vide which the original Judgment & Decree passed by the Ld. Addl. Civil Judge (Senior Division) Garhshankar in Civil Suit No.334 of 2000 dated 17.11.2009 in favour of the Plaintiff was upheld.

2. The suit was filed by deceased Ram Kaur mother of present Respondent No.1, for a declaration that she was the sole exclusive owner and in possession of the land measuring 1 Kanal 1 Marla, bearing Khata Nos.129/292, 293 bearing Khasra No.6//2/3 min (0-18), 6//2/3 (min) (0-3) vide Jamabandi for the year 1996-97, situated in the area of village Sekhowal, and that the entries in the revenue record drawn up in the name of the original Defendants were wrong, illegal, unlawful, null & void ab-initio, without any base, with a further prayer for permanent injunction to restrain the Defendants from interfering in her peaceful possession of the said lands. Her case

was that the disputed lands were allotted to her during the Consolidation Proceedings in lieu of her previous Khasra numbers, after which she became absolute owner and entered into possession of the suit land along with her other lands, and that the Defendants who were headstrong persons, had threatened and attempted to dispossess her from the lands by relying upon the erroneous entries regarding cultivation drawn up in their names.

3. The suit was contested on behalf of the original Defendants Charan Singh and Swaran Singh, who in their Written Statement, while admitting that the Plaintiff had indeed been allotted and delivered possession of the disputed suit lands, nevertheless contended that they had become its owners on account of an oral sale of the same by the Plaintiff in their favour, which was effected on 14.6.1978 for a consideration price of Rs.2000/-, and that the Plaintiff had delivered possession of the lands to them with the assurance that she would execute such Sale Deed whenever required by the Defendants. It was their further case that on the date of Sangrand in the month of Jeth 1987, they sold a portion of the suit land measuring 3 Marlas to original Defendant No.8 Bakhshish Singh by way of similar oral transaction for a consideration of Rs.500/-, after which the said Defendant started using the aforesaid land in question for the purpose of ingress and egress from his own previously owned land. These averments which were made in the Written Statement filed on behalf of the Defendants, were denied and rebutted by the Plaintiff in her Replication.

4. Obviously therefore, when the original ownership of the

Plaintiff on the strength of allotment of the suit land to her in Consolidation Proceedings was admitted, the burden of proof regarding sale of the said land to them squarely lay upon the Defendants. Admittedly, no Sale Deed in writing was executed even though the consideration amount quoted by them in their Written Statement was Rs.2000/-, which is in excess of Rs.100/- only for which registration of a valid Transfer Instrument is legally required. The same was also required even for the purpose of second sale purportedly made by the original Defendants in favour of Defendant No.8 Bakhshish Singh themselves, since even for that purpose the sale consideration was Rs.500/-. Clearly, no Title in favour of any of the Defendants in the absence of any such registered instrument could have been passed on.

5. Even otherwise, it was the case of the Defendants that they had time and again requested the original Plaintiff to formally execute the Sale Deed in their favour after she had allegedly taken the consideration amount of Rs.2000/- from them, but she had avoided such execution on one pretext or the other. But in such a situation, the Defendants at no time found it fit and proper to sue the Plaintiff either for specific performance of the contract of sale, or to assert their rights by way of any other legal proceedings, which omission can only support the Plaintiff's specific denial that no such Sale Agreement or transaction was ever entered into.

6. Both the Ld. Courts below were therefore, right in their observations that the Defendants could not rely upon a defence of an oral Agreement of Sale under Section 53-A of the Transfer of

Property Act, since benefit of that provision is available only when the contract for transfer of such immovable property is in writing and is signed by the parties (See **V.R.Sudhakara Rao and Ors. Vs. T.V.Kameswari, 2007(2) CCC 725 (SC); Shivayya v. Praveena & Anr., 2008(4) CCC 294 (Kar)** and **Om Parkash Nangalia v. Binod Ku Goenka & Ors., 2006(2) CCC 694 (Orissa)**).

7. Furthermore, while Ex-Sarpanch of village namely one Mansha Ram had deposed in favour of the Defendants to support their story regarding the oral sale by the Plaintiff, nevertheless he could not explain as to why in his capacity as Sarpanch at the relevant time when the Khasra Girdawari in the name of the Defendants was drawn up by the Halqa Patwari in his presence as also in the presence of the Plaintiff herself at that time, it was not considered fit and proper to obtain her signature or thumb impression on any document drawn up in connection with those revenue settlement proceedings.

8. This Court therefore, has no hesitation in concluding that the Defendants/Appellants had miserably failed to discharge the burden of proving the facts narrated in their defence, since it was otherwise undisputed that the ownership of the suit lands as a consequence of Allotment in the Consolidation Proceedings had rightly belonged to the Plaintiffs. The Court thus finds no reasons to interfere with the decision of both the Courts below which have gone in favour of the Plaintiff/Respondent. Dismissed.

(SUDIP AHLUWALIA)
JUDGE

March 12, 2019

AS

1. Whether speaking/reasoned ?	Yes/No
2. Whether reportable ?	Yes/No