

RSA-4233 of 2012 (O&M)

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

RSA-4233 of 2012 (O&M)
Date of decision: 12.07.2019

Balwant Singh

.....Appellant

versus

Sarbati alias Sarvsukhi

.....Respondent

RSA-94 of 2013 (O&M)

Sarbati alias Sarvsukhi

.....Appellant

versus

Balwant Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Sapan Dhir, Advocate,
for the appellant (in RSA No.4233 of 2012)
and for the respondent (in RSA No.94 of 2013).

Mr. J.P. Sharma, Advocate,
for the respondent (in RSA No.4233 of 2012)
and for the appellant (in RSA No.94 of 2013).

RAMENDRA JAIN, J. (ORAL)

By this common judgment, above-titled to Regular Second Appeals, one filed by defendant and other by plaintiff against judgment and decree of the lower appellate Court dated 14.08.2012, partly setting aside judgment and decree of the trial Court dated 18.05.2010, whereby suit of the plaintiff Sarbati @ Sarsvsukhi was dismissed, are being disposed of.

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For convenience sake, reference to parties is being made as per their status before the trial Court.

Briefly, plaintiff Sarbati @ Sarsvsukhi filed a suit for permanent injunction to restrain defendant Balwant Singh from interfering into her possession over the suit land comprising rectangle No.62 khasra No.8/1 measuring 1 kanal 18 marlas situated in Village Rata Kala, Tehsil Narnail, as per jamabandi for the year 1998-99, which after holding trial was dismissed vide judgment and decree dated 18.05.2010.

Being aggrieved, plaintiff Sarbati @ Sarsvsukhi approached the First Appellate Court, which after hearing both the sides, declared Sarbati @ Sarsvsukhi owner in possession to the extent of half share vide judgment and decree dated 14.08.2012, while setting aside above judgment and decree of the trial Court to this extent.

Heard.

Undisputed facts between the parties are as follows.

Defendant Balwant Singh claimed himself to be owner in possession of the suit land on the basis of two sale deeds Ex.PW2/A and PW2/B allegedly executed by Sarbati @ Sarsvsukhi and her mother Mamli vide sale deed dated 09.07.1966. Till the year 1983, defendant-Balwant Singh had no problem with plaintiff Sarbati @ Sarsvsukhi inasmuch as revenue entries Ex.D1 to Ex.D14 were showing his ownership and possession over the suit land. In the year 1983, defendant Balwant Singh approached revenue authorities to make some correction in the revenue record in his favour, which was contested by plaintiff Sarbati @ Sarsvsukhi, forcing defendant Balwant Singh to file a suit for declaration Ex.DW5/A, in

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which upon notice plaintiff Sarbati @ Sarsvsukhi filed admission written statement Ex.DW6/A admitting claim of defendant Balwant Singh in toto. Consequently vide judgment and decree dated 20.09.1983, decreeing suit of defendant Balwant Singh, civil Court declared him owner in possession of the suit land. Said judgment and decree was never challenged by plaintiff Sarbati @ Sarsvsukhi . Therefore, same attained finality. Nineteen years thereafter, in the year 2002, plaintiff Sarbati @ Sarsvsukhi filed a suit against the defendant for permanent injunction, which after holding trial was dismissed. However, appeal filed by plaintiff Sarbati @ Sarsvsukhi was partly accepted.

Having given thoughtful consideration to the rival submissions, this Court finds that the appeal of defendant Balwant Singh (RSA No.4233 of 2012) merits acceptance, whereas appeal of plaintiff Sarbati @ Sarsvsukhi (RSA No.94 of 2013) merits dismissal for the reasons to follow.

Sale deeds Ex.PW2/A and Ex.PW2/B executed by plaintiff Sarbati @ Sarsvsukhi and her mother Mamli, respectively, were for Rs.70/- each i.e. less than the value of Rs.100/-. Therefore, they did not require compulsory registration and were rightly given effect in the revenue record. In the year 1983, claim of defendant Balwant Singh that he was owner in possession of the suit land was admitted by plaintiff Sarbati @ Sarsvsukhi in toto by filing admission written statement in a suit filed by him. Therefore, vide judgment and decree dated 20.09.1983, defendant was again declared owner in possession of the suit land. Consequently, filing of suit after 19 years thereafter, in the year 2002 by plaintiff Sarbati @ Sarsvsukhi for permanent injunction was hopelessly time-barred and thus, was rightly

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dismissed by the trial Court. However, the appellate Court failed to appreciate this aspect of the matter.

Finding of the appellate Court that sale deeds in favour of defendant Balwant Singh since did not bear his signature, therefore, the same are not valid documents of title, is completely perverse and erroneous inasmuch as there is no such legal requirement that every sale deed should also be signed/thumb marked by a vendee.

Finding of the Appellate Court that there is no recital qua delivery of possession in the aforesaid sale deeds is contrary to the facts inasmuch as delivery of possession to defendant Balwant Singh by plaintiff Sarbati @ Sarsvsukhi was specifically recited therein.

Finding of the Appellate Court to the effect that in civil suit in the year 1983 mother of plaintiff Sarbati @ Sarsvsukhi had not filed any admission written statement, therefore, suit qua her mother should not have been decreed, is again illegal inasmuch as mother of plaintiff Sarbati @ Sarsvsukhi never came forward during her lifetime to challenge the same. Moreover, plaintiff Sarbati @ Sarsvsukhi sole legal heir of her mother Mamli had stepped into her shoes after her death.

Suit of plaintiff Sarbati @ Sarsvsukhi was barred by principle of “*res judicata*” in view of decreetal of suit of defendant Balwant Singh relating to the same suit property in the year 1983.

In view of discussion made above, appeal of defendant Balwant Singh (RSA No.4233 of 2012) is accepted and appeal of plaintiff Sarbati @ Sarsvsukhi (RSA No.94 of 2013) is dismissed. Resultantly, judgment and decree of the appellate Court dated 14.08.2012 is set aside and judgment

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and decree of the trial Court dated 18.05.2010, dismissing suit of the appellant-plaintiff Sarbati alias Sarvsukhi is affirmed.

Decree-sheet be prepared accordingly.

July 12, 2019
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No