

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

RSA No.5162 of 2013 (O&M)
Date of Decision: July 22, 2019

Lt. Colonel Gugan Singh Yadav

...Appellant

Versus

Jagmal Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. R.S. Sihota, Senior Advocate with
Mr. B.R. Rana, Advocate
for the appellant.

None for respondents No.18 to 20.

JAISHREE THAKUR, J. (Oral)

1. The instant regular second appeal has been filed against the judgment and decree dated 01.11.2013 passed by the first Appellate Court whereby, the appeal filed by the appellant-plaintiff (hereinafter referred to as 'the appellant') against the judgment and decree dated 31.07.2013 passed by the lower court, dismissing the suit of the appellant, has been dismissed.

2. In brief, the facts of the case are that the appellant herein filed a civil suit alleging therein that he had purchased the suit land measuring 1 kanal 4 marla situated within the revenue estate of village Zinabad from Ghisa Ram for a sale consideration of ₹2900/- on 10.09.1971. It was submitted that Ghisa Ram inherited the suit land from his ancestors and being exclusive owner in possession, executed the sale deed of the suit land

on 10.09.1971 and also delivered the possession in favour of the appellant on the spot in the presence of witnesses. It was pleaded that vendor Ghisa Ram was bachelor and died intestate in the year 1974. It was further submitted that after his retirement, the appellant organized the foundation laying ceremony for the construction of Dharamshala on 12.01.1992 and thereafter started collecting construction material. It was alleged that on 07.09.1992, the respondents with the mala fide intention entered into the premises by opening the gate and threatened the appellant with dire consequences. Thereafter, the suit land was illegally sold to respondent-Sunil Kumar vide sale deed dated 19.06.2000 and on the basis of said sale deed, mutation was also sanctioned in favour of said Sunil Kumar. It was claimed that said sale deed dated 19.06.2000 and the subsequent mutation entered in favour of respondent-Sunil Kumar is not binding upon the appellant.

3. Upon notice, respondents No.18 to 20 appeared and contested the suit of the appellant, while submitting that the appellant had no right, title or interest in the suit property. It was pleaded that Ghisa Ram was issueless and after his death, the suit land was inherited by his successors namely Hira and others and mutation No.727 dated 28.12.1980 was also sanctioned in their favour. Thereafter, said Hira and others sold the suit land to respondent-Sunil Kumar vide registered sale deed dated 19.06.2000 and subsequently, in this regard, mutation No.1355 dated 29.09.2000 was sanctioned in favour of said Sunil Kumar. After that, the suit land was transferred in favour of respondents No.18 to 20 vide sale deed dated 19.02.2001 and mutation to this effect has also been sanctioned in their

favour. It was submitted that respondents No.18 to 20 are recorded owners in possession of the suit land as per jamabandi for the year 2004-05. Remaining averments of the plaint were denied.

4. From the pleadings of the parties, issues were framed and evidence was led by both the parties. After hearing both the sides, the lower court dismissed the suit of the appellant and the first appeal by the appellant also stood dismissed. Now, both the judgments and decrees passed by the courts below are under challenge in this appeal.

5. Mr. R.S. Sihota, learned Senior counsel, assisted by Mr. B.R. Rana, Advocate appearing on behalf of the appellant argues that the appellant had purchased the suit land vide sale deed dated 10.09.1971, executed in the presence of Sarpanch and other respectables of the village. It is contended that the mutation sanctioned in favour of Hira and others, who claimed themselves to be successors-in-interest of Ghisa Ram, was illegal null and void. It is argued that the courts below have misappreciated the provision of Section 50 of the Registration Act.

6. I have heard learned Senior counsel for the appellant and have also gone through the case file.

7. The lower court, while dismissing the suit of the appellant, has observed that all the witnesses examined by the appellant stated that the suit land was purchased by the appellant in a Panchayat for some sale consideration, however, they have not categorically deposed the exact amount of sale consideration paid by the appellant. None of the witnesses has deposed that he was the attesting witness of the said sale. On the other hand, the testimony of witnesses examined by the contesting respondents

showed that the chain of the registered sale deeds is complete and all the vendors of the suit property, right from the beginning, have categorically deposed in favour of the respondents. As such, it is clear that respondents are owners in possession of the suit land vide registered sale deeds in their favour. Further Section 50 of the Registration Act provides that registered document gets priority over non-registered written document. The findings given by the lower court were affirmed in appeal by the first Appellate Court.

8. Learned Senior counsel for the appellant has failed to point out any perversity in the findings recorded by the courts below. In the present case, mutation of inheritance of Ghisa Ram, who died issueless, was sanctioned in name of Hira and other successors-in-interest after his death vide Aksh Shazra Ex.D1 and mutation No.727 Ex.D3. Thereafter, said Hira and other successors-in-interest of Ghisa Ram, sold the suit land to Sunil Kumar vide Ex.D4 and further mutations sanctioned on the basis of sale of land by Sunil Kumar in the name of respondents No.18 to 20 are proved as Ex.D5 and Ex.D6. Besides this, jamabandi for the year 2004-2005 records entries in the name of respondents No.18 to 20 as owners in possession of the suit land. These mutations and sale deeds executed in favour of the respondents have not been challenged by the appellant. There is no evidence available on the record that the mutation of inheritance of Ghisa Ram and further mutation on the basis of sale deeds are illegal, null and void. There is nothing on record to show that the appellant raised any construction over the suit land after alleged purchase of the land. In fact, the appellant has failed to establish that he had purchased the suit land.

Moreover, the sale deed alleged to be executed on 10.09.1971 by Ghisa Ram in favour of the appellant, on which the whole case of the appellant is built, has not been produced on record. Once the appellant has failed to prove his possession over the suit property, the plea of adverse possession is not available with the appellant, which can otherwise only be raised in defence.

9. In view of the above, this court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellant-plaintiff, which has no merit.

10. Dismissed.

July 22, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No