

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

**RSA No.2978 of 2016 (O&M)
Date of Decision.04.02.2019**

Ajit Ram and others

...Appellants

Vs

Amar Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sarju Puri, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The appellants-plaintiffs are in regular second appeal against the concurrent finding of fact whereby suit claiming to be co-sharer and owner along with defendants No.25 to the extent of 1 kanal 6 marlas 2 sarsahis out of property measuring 12 kanals 6 marlas 2 sarsahi with consequential relief of permanent injunction has been dismissed by the trial and affirmed in appeal.

The plaintiffs sought aforementioned relief on the premise that Kewal Ram i.e. predecessor-in-interest of the parties had purchased total land measuring 1 kanal 6 marlas and 3 sarsahis vide two sale deeds i.e. sale deed dated 17.06.1983, Ex.P3 for 18 marlas (hereinafter called 'first sale deed') and 30.09.1983, Ex.P4 for 16 ½ marlas (hereinafter called 'second sale deed') from Deva Singh, father of defendant No.1. Vide first sale deed, purchased 18 marlas falling in following khasra numbers:-

“22/16/1/4, 17/2 and 25//5/2”

Vide second sale deed, purchased 8 marlas 2 sarsahis comprising following khasra numbers:-

“22//16/1/4, 17/2, 25//5/2 and 22//24”

Mutations in respect of sale deeds were sanctioned. However, revenue authorities while reflecting mutation No.1779 instead of recording plaintiffs and defendants No.2 to 6, 25 and 26 to be owners of 16 ½ marlas, recorded them as owners of 8 ½ marlas in following khasra numbers:-

“22/16/1/4, 17/2, 25//5/2 and 22//24”

Subsequently, Deva Singh died and succeeded by defendant No.1, who sold property to different vendees. Partition of the suit property occurred in 1990-91 and vide order dated 18.04.1991, plaintiffs as well as other vendees were allotted property comprising of following khasra number:-

“22//24/2, 25/2, 25//4/1/2, 5/1 and 5/2”

Defendant No.1 after filing written statement was proceeded ex parte. All other defendants were also proceeded ex parte.

Mr. Sarju Puri, learned counsel appearing on behalf of the appellants submitted that both the Courts below have committed illegality and perversity, as documentary evidence brought on record has gone unscathed and unrebutted. In the absence of any contrary evidence, the Courts below after examination of the documents was required to decree the suit. The plaintiffs have been able to prove the pleadings, as the evidence was in tandem with pleadings. There is no question of limitation in the matters involving title. The finding of Courts below that a co-sharer could not be held to be in exclusive possession is wholly erroneous, as the plaintiffs have raised the

construction of their house with specific boundaries and thus, exclusive possession was proved, therefore, there was no question of ouster.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit. Deva Singh, in fact, was not owner of khasra numbers 22//24 in the second sale deed and therefore, plaintiffs could not be accorded declaration with regard to validity of second sale deed. Share of vendee as claimed by plaintiffs was accordingly reduced proportionately. The plaintiffs were fully aware of the aforementioned circumstances as per sale deeds. The remedy lied elsewhere. Mere registration of sale deed would not confer title. Defendant No.1 acted as attorney of Deva Singh and he, therefore, could not be made liable for recouping the shortfall in the absence of title of Deva Singh.

All these facts have been examined by the Courts below threadbare. No contrary evidence has been laid to enable this Court 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 by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 04, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No