

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

**RSA No.2830 of 2015 (O&M)
Date of Decision.11.02.2019**

Sukhdev Singh and others

...Appellants

Vs

Sarabjit Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Arora, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The substantial question of law attempted to be propounded by Mr. Amit Arora, learned counsel appearing on behalf appellants-defendants is whether in the mutation proceedings sanctioning mutation in favour of the defendants on the basis of the Will dated 10.04.1999, sale deeds executed by three legal heirs of Inder Singh from which plaintiffs deriving title, could be declared null and void or not.

Plaintiff sought declaration qua land measuring 25 kanals 19 marlas out of total land measuring 174 kanals 12 marlas on the basis of sale deeds dated 17.5.2002, 23.5.2002 and 11.10.2002 stated to be executed by two sons and widow of late Inder Singh. Inder Singh was owner of the land measuring 174 kanals 12 marlas. On his demise, mutation dated 14.12.2001 was sanctioned, as he deemed to have died intestate. However, those proceedings were challenged by the appellants-defendants and ultimately on remand, mutation on 11.08.2008 on the basis of the Will aforementioned was sanctioned. The suit was filed on 13.09.2008.

Defendants opposed the suit and stated that suit was hit by doctrine of *lis pendens* or Order 2 Rule 2 CPC, as widow of Inder Singh earlier instituted the suit claiming 1/7th share against father of plaintiffs and defendants, as Inder Singh father of defendants and Joginder Singh father of respondents-plaintiffs were real brothers. Defendant No.7 support claim of the plaintiffs.

Since the parties were at variance, the trial Court framed the following issues and additional issues:-

- “1. Whether the plaintiff is entitled to decree for declaration as prayed for? OPP.*
- 2. Whether the plaintiff is entitled to a decree for permanent injunction, restraining the defendants No.1 to 4 for ever from interfering in the peaceful possession of the land and further restraining the defendants from alienating the land measuring 25K-19M of specific khasra number out of the suit land? OPP.*
- 3. Whether the plaintiff is entitled to joint possession in respect of land measuring 25 kanals 19 marlas of the land out of the said land measuring 174 kanals 1 marlas as prayed for? OPP*
- 4. Whether the present suit is not maintainable? OPD*
- 5. Relief.*

Additional issues framed on 30.1.2014

- 1. Whether the plaintiffs and defendants No.27 are bona fide purchasers of the purchased land as mentioned in para no.4 of the plaint? OPP*

2. *Whether the plaintiffs and defendants no.27 mortgaged the land mentioned in para no.6 of the plaint in favour of defendant no.25 being security of land taken them from the bank as alleged in para no.6 of the plaint? OPP*

3. *Whether the plaintiffs and defendants No.27 mortgaged the land for security purposes in favour of defendant no.24 vide mortgage deed dated 27.2.2014 as alleged in para no.1 of the written statement? OPD 24.”*

Plaintiffs examined as many as five witnesses whereas defendants examined four witnesses.

Mr. Amit Arora, learned counsel appearing on behalf of the appellants submitted that previous litigation with father of plaintiffs did not set up a title, despite the fact that sale deeds were hit by doctrine of *lis pendens*. Once the mutation proceedings on the basis of Will were sanctioned in favour of defendants, sale deeds *ibid* were illegal and null and void, despite having lost in all the revenue courts. The lower Appellate Court did not refer to all the documents, much less, evidence and the finding is verbatim to the reasoning assigned by the trial Court. Inder Singh, in such circumstances, did not die intestate.

I am afraid aforementioned arguments are not sustainable for the following reasons:-

(i) The defendants did not assail the registered documents i.e. sale deeds by setting up any counter-claim. It is settled law that the proceedings of mutation

conducted by the revenue courts, even if they are sanctioned on the basis of the Will, would not be binding on the Civil Court.

(ii) Defendants did not examine any witness of the Will, much less, scribe, thus, question of compliance of provisions of Section 68 & 69 of the Indian Evidence Act and Section 63 (c) of the Indian Succession Act does not arise.

(iii) Vendors through the aforementioned sale deeds sold their 173/3492 share i.e. 8 kanals 13 marlas each that comes to 25 kanals 19 marlas, thus, plaintiff was rightly declared owner in joint possession of 25 kanals 19 marlas by the Courts below.

As an upshot of my finding, I do not find any illegality and perversity in the concurrent finding of fact rendered 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 11, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No