

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

RSA No. 4648 of 2016 (O&M)

Date of decision: 15.05.2019

Balbir Singh Dhillon and others

... Appellants

Vs.

Welfare Society (Patti Mehna) Bathinda and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vikas Singh, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The present regular second appeal is, at the instance of the plaintiffs, directed against the concurrent findings of fact, whereby the suit of the appellants-plaintiffs for declaration to the effect that defendant No.1-society constituted by defendant no.2 to 7 in connivance with some other person with a mala-fide intention to usurp property of *Shamlat Patti Mehna* was illegal, null and void and have no concern with the property of Shamlat of Patti Mehna including Shamshan Ghat known as Shamshan Ghat, Bibi Wala Raod, Bathinda and property of Shri Guru Granth Sahib-cum-Dharamshala and have no right to recover any amount of compensation lying/deposited in the competent Court of law and also sought for injunction restraining the defendants from constructing shops and raising any type of commercial or residential building has been dismissed.

It was alleged that the plaintiffs and defendant No.4 are the co-shares in the land and filed a representative suit under Order 1 Rule 8 of the Code of Civil Procedure, 1908. The defendants became the members of an unauthorized society, mis-appropriated the funds of the said society.

They have no right to sell the property of the shamlat land. Installation of a

gate in a portion of wall which could not have been done. A complaint in this regard was made by plaintiff no.1 to the Chief Minister, Punjab hence the suit was filed.

Defendant Nos. 1 to 3 , 5 and 6 contested the suit by filing separate written statements raising preliminary objections of locus standi, cause of action, maintainability, estoppel and approached Court with unclean hands. On merits, plaintiffs being co-sharers of the land of shamlat Patti Mehna but alleged that no portion of shamlat land was ever misappropriated or wasted. Even the defendants properly managed the properties of shamlat land.

Defendant Nos.7 and 8 also contested the suit by filing their joint written statement. On merits, it was averred that they being the co-sharers as well as members of defendant no.1-Society, had been managing the shamlat property and there was no mis-appropriation of funds, as alleged.

After framing of issues by trial Court, the plaintiffs in support of their claim examined himself and produced on record various documents Ex.P1 to Ex.P70 i.e. various letters, receipts, copy of form, bills etc.

On the other hand, the contesting defendants also examined DW1 in their defence and produced on record various documents.

The trial Court after noticing the evidence led by both the parties as well as after going through the records placed on the file, dismissed the suit of the plaintiffs.

The appeal filed by the plaintiffs was also dismissed by learned Additional District Judge, Bathinda, vide judgment and decree dated 5.4.2016.

Learned counsel for the appellants submits that both the Courts below without appreciating the evidence as well as documents placed on the file, dismissed the suit of the plaintiffs, which are likely to be succeed. Possession of the plaintiffs qua the right over the shamlat land being co-sharers, at least, could have been protected.

I am afraid that the aforementioned argument is not sustainable in the eyes of law. If at all the plaintiffs being the co-sharers of the shamlat land had any grievance, they could have sought the relief by way of filing a suit for partition. The person may tell lie but not the documents. Cross-examination is reflection of the demeanor of the witness. The onus to prove the aforementioned relief sought by the plaintiffs was upon them. In my view, the plaintiffs have failed to prove the burden of onus with regard to their claim as per Sections 101 to 103 of the Indian Evidence Act in proving the alleged mis-appropriation of funds. It has been rightly held by the Courts below that mere relying upon the complaint, it cannot be proved on record that any act of misappropriation of assets had been done by the defendants-society.

In view of such circumstances, 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. Accordingly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

15.05.2019
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Whether Speaking/Reasoned Yes
Whether Reportable No