

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

RSA No.5988 of 2016 (O&M)

Date of decision:15.01.2019

Balwan

... Appellant

Vs.

Partap Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr.Sumit Sangwan, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The present Regular Second Appeal is directed against the concurrent findings of facts and law at the instance of the appellant-plaintiff who has not been succeeded in claiming the declaration to be owner in possession of suit land measuring 8 kanals i.e. 1 acre having no concern with the ownership and possession of suit land and the sale deed dated 05.08.2005 executed by guardian of the plaintiff i.e. Defendant no.2 with a further prayer of injunction qua forcible interference and dispossession.

The plaintiff asserted that he acquired the ownership of the suit land on the basis of sale deed dated 09.01.1998 executed by Ganpat, his grandfather who unfortunately died on 7.6.1998. The mutation bearing no.5500 was sanctioned in his favour on 15.04.1999 and the property was ancestral. Defendant no.2, father of the plaintiff was addicted to vices. In order to usurp the aforementioned land, filed a petition in the year 2001

before the Court and sought the permission to sell the land. The aforementioned permission was granted vide order dated 04.02.2002 by imposing certain condition which was not complied with as the balance sale consideration was required to be deposited in the fixed deposit. He sold the land vide impugned sale deed dated 05.08.2005 for a sale consideration of Rs.1,60,000/- and after discharging the alleged loan liability, did not deposit the balance sale consideration in the fixed deposit, thus, in such circumstances, there was deviation from the admission, thus, the sale deed was liable to be set aside.

Defendant no.1 opposed the suit and claimed himself to be a bonafide purchaser for a valuable consideration and alleged that suit was filed by the plaintiff in collusion with defendant no.2. Defendant no.2 initially appeared and thereafter, proceeded ex parte.

Since the parties were at variance, the trial Court framed as many as 9 (nine) issues including the issue of Relief. The plaintiff led the oral evidence and closed the evidence and defendants also led oral evidence.

Mr. Sumit Sangwan, learned counsel appearing on behalf of the appellant-plaintiff submitted that defendant no.2, father of plaintiff did not comply with the conditions imposed while granting permission to sell the land in the year 2002 for sale of the land owned by the appellant-plaintiff therefore, there was occasion which gave a cause of action as the suit at the relevant point of time in 2007 was filed through guardian and he acquired the majority during the pendency of suit and appeared as own witness. Defendant no.1- beneficiary of the sale deed dated 05.08.2005 admitted the

ownership and existence, much less possession of a house constructed in the part of the land. In such circumstances, the Courts below at least should have granted the injunction, therefore, there is gross illegality and perversity.

I am afraid the aforementioned arguments are not sustainable, for, mere admission of the existence of house would not tantamount to discharging the onus vis-a-vis injunction as the plaintiff miserably failed to place on record any revenue record to establish existence of house and its possession. The nature of the suit property is agricultural land. If at all there was deviation from the admission, the plaintiff has remedy of seeking clarification/modification of the order but not in the manner and mode, as indicated above.

No ground for interference is made out.
Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 15, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No