

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

CM No.19457-C of 2018 in

CM No.1070-C of 2016 in

RSA No. 2215 of 2014

Date of decision: 11.1.2019

Resham Singh

.....Applicant-Appellant

VERSUS

Gursewak Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ramneek Vasudeva, Advocate for the applicant-appellant.

REKHA MITTAL, J. (Oral)

CM No.19457-C of 2018

Heard.

In view of averments made in the application supported by an affidavit of Mr. Ramneek Vasudeva, Advocate, counsel for the applicant, the same is allowed. Order dated 21.11.2018 is recalled and CM No.1070-C of 2016 is ordered to be restored to its original number and status.

Disposed of accordingly.

CM No.1070-C of 2016

Heard.

In view of averments made in the application supported by an affidavit of Mr. Ramneek Vasudeva, Advocate, counsel for the applicant,

the same is allowed. Order dated 19.12.2015 is recalled and RSA No.2215 of 2014 is ordered to be restored to its original number and status.

Disposed of accordingly.

RSA No.2215 of 2014

The present appeal directs challenge against concurrent findings of fact whereby counter claim filed by the appellant/ defendant No.3 in suit No.426/2005 filed by Gursewak Singh and Inderjit Singh, sons of the appellant, was dismissed while dismissing the suit filed by Gursewak Singh and another vide judgment and decree dated 25.01.2012 passed by the Civil Judge (Junior Division), Jalandhar whereby plea of Gursewak Singh and another with regard to suit land being ancestral co-parcenary property and challenge to various sale deeds and mortgage deed on that premise was rejected. Similarly, the counter claim filed by the appellant to challenge the sale deeds purportedly executed by him was rejected.

The judgment and decree passed by the trial Court became subject matter of two appeals i.e. one filed by Gursewak Singh and Inderjit Singh and the other filed by the present appellant/ defendant No.3, decided vide common judgment and decree dated 10.04.2013 passed by the Additional District Judge, Jalandhar whereby both the appeals were dismissed and as a consequence, findings recorded by the trial Court were affirmed without any variance.

Perusal of the judgments passed by the Courts would reveal that the present appellant challenged the sale deeds executed in favour of Gurdev Kaur and Sukhwinder Singh in the year 2002 by filing counter claim dated 12.04.2006. The Appellate Court has held that had there been

a grain of truth in his averment, the appellant would not have waited till April 2006 to challenge the sale deeds executed way back in the year 2002. It has further been noticed by the Court that Resham Singh –appellant did not appear in the witness box to prove the averments raised in the counter claim to assail the sale deeds executed in favour of Gurdev Kaur and Sukhwinder Singh. As per settled law, an adverse inference is liable to be drawn against the appellant for his failure to appear in the witness box without any tangible explanation. No sooner the appellant kept himself away from the witness box, there is no material on record to substantiate plea of the appellant to challenge the sale deeds purportedly executed by him in favour of Gurdev Kaur and Sukhwinder Singh. That being so, I do not find an error much less perversity in consistent findings recorded by the Courts dismissing the counter claim preferred by the appellant.

Counsel for the appellant has failed to advance any arguments much less meaningful in order to convince this Court that consistent findings recorded by the Courts suffer from perversity or the present appeal gives rise to a question of law that requires determination after notice to the contesting party.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed in limine.

JANUARY 11, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no