

RSA-1905-2017 (O&M)

132

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

**RSA-1905-2017 (O&M)
Date of decision : 13.02.2019**

Dalip Singh

... Appellant

Versus

Labh Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vijay Lath, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

The appellant defendant No. 1 is in the present regular second appeal against the concurrent findings of fact, whereby the suit of the respondent Nos. 1 & 2/plaintiffs for declaration and permanent injunction, has been decreed by the trial Court and affirmed in appeal.

The plaintiffs alleged that defendant No.1-Dalip Singh, appellant herein, sold his permissible share in the suit land to plaintiff Nos. 1 and 2, vide two sale deeds dated 29.12.1989, but he failed to appear before the revenue authorities for the mutation, rather ran away from the spot. By taking the advantage of the entry in the revenue record, further sold the land to defendant Nos. 2 and 3, vide sale deed dated 13.10.1997. The plaintiffs had been in possession of the land and built their house purchased by them, even the revision petition was also filed before the Collector and the matter was remitted to the Assistant Collector 1st Grade-cum-SDO (C), Ropar. Vide order dated 09.01.2008, it was observed that

RSA-1905-2017 (O&M)

though the entry in the name of defendant No.2, had already been incorporated in the jamabandi, but remedy was to file the suit and in such circumstances, the Civil Suit, aforementioned, was filed in the year 2008.

The defendants opposed the suit by taking the preliminary objection of limitation and on merits, it was alleged that the sale deed reflected in the jamabandi, much less, mutation. The plaintiffs were involved in three FIRs.

Mr. Vijay Lath, learned counsel appearing on behalf of the appellant-defendant No.1, submitted that the simpliciter suit for declaration, in the absence of relief of possession, particularly when the property is in possession of the defendants, in view of the provisions of Section 34 and 42 of the Specific Relief Act, 1963, was not maintainable. The plaintiffs were aware of the mutation in the name of defendant No.1, but did not chose to file the suit as late as in the year 2008, therefore, the suit was barred as per the provisions of Article 58 of the Limitation Act.

I am afraid the aforementioned arguments are not sustainable in the eyes of law as there is no limitation qua claiming the right of title, on the basis of the registered document, as cause of action would only arise, when the possession is threatened. The appellant-defendant No.1 has not been able to establish the possession by placing on record any khasra girdawaris. In such circumstances, the provisions of Sections 34 and 42 of the 1963 Act cannot be pressed into service, rather impugned decrees, confined not only to declaration, but injunction restraining the defendants from forcible interference and dispossession. Once the sale deed dated 13.10.1997 in favour of defendant Nos.2 and 3, was, in the eyes of law, null and void, as defendant No.1, herein appellant, did not have any alienable or saleable

RSA-1905-2017 (O&M)

right owing to relinquishment of the right and title, by execution of the sale deeds, in favour of the plaintiffs.

In this view of the matter, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeal is dismissed.

13.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**