

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

**RSA No.262 of 2017 (O&M)
Date of Decision.13.02.2019**

Samittar Singh

...Appellant

Vs

Mohinder Singh (deceased) through LRs and other ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Sarika Gupta, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.575-C of 2017

For the reasons stated in the application, delay of 46 days
in re-filing of the appeal is condoned.

Application is allowed.

RSA No.262 of 2017

The present appeal is directed against the concurrent
finding of fact whereby the plaintiff challenged the sale deed dated
2.8.1999 executed by Mohinder Singh, defendant No.1 in favour of
defendants No.2 and 3 and consequent mutation 2881, has been
dismissed.

The plaintiffs alleged that vide sale deed 29.03.1996,
they had purchased the land measuring 31 kanals 8 marlas from
Mohinder Singh. Plaintiffs were made owners in possession of 16
kanals 15 marals of land out of kahasra No.4156/3533 and remaining
land was retained by defendant No.1 on its north-eastern corner.
Defendant No.1 sold an area of 659 sq. ft to defendants No.2 and 3,
which is part of 16 kanals 15 marlas of which plaintiffs were put in

owners as possession. Defendants No.2 and 3 raised construction over 549 sq. ft out of 659 sq. ft and dispossessed the plaintiffs forcibly after execution of impugned sale deed dated 2.8.1999. It is in these circumstances, suit for declaration and consequential relief of possession was filed.

Defendants opposed the suit and raised the preliminary objection qua limitation and maintainability etc. On merits, it was averred that defendant No.1 along with his brother owned land measuring 145 kanals 12 marlas, which they acquired through decree dated 23.6.1972 and gave details of sale deeds and various other areas had been left out of land measuring 9 marlas.

Plaintiff No.1 in support of aforementioned pleadings, examined himself and also examined local commissioner, who submitted his report as Ex.P3 and brought on record sale deed dated 29.03.1996. On the other hand, defendants brought on record details of litigation in the previous suit and written statement etc.

Ms. Sarika Gupta, learned counsel appearing on behalf of the appellant submitted that if the details given in the written statement are calculated then sale deed in dispute was of an excess area and certainly affected title and right of the plaintiffs. This fact has been endorsed by the local commissioner, despite said fact the Courts below had non-suited plaintiffs.

I am afraid aforementioned argument of Ms. Sarika is not sustainable, for, details of sale deeds referred to by the defendants ought to have been brought on record for enabling the Courts below to arrive at a conclusion that sale of parcel of land by the defendants

was in excess of balance left out area of 9 marlas or more. It would have vindicated the evidence and cause of action of the plaintiff. In the absence of the same, courts below could not rely upon report of the local commissioner Ex.P3, which was only pertaining to inspection of the spot.

In view of such circumstances, I do not subscribe to the arguments of Ms. Sarika to form a different opinion than the one already arrived at 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 13, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No