

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

**RSA No.3213 of 2017 (O&M)
Date of Decision.03.05.2019**

Sumitra Chanana ...Appellant

Vs

Sudarshan Bhatia and others ..Respondents

2. RSA No.448 of 2018 (O&M)

Sumitra Chanana ...Appellant

Vs

Sudarshan Bhatia and others ..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. SKS Bedi, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.1146-C of 2018 in RSA No.448 of 2018

For the reasons stated in the application, delay of 72 days
in re-filing of the appeal is condoned.

Application is allowed.

C.M. No.7920-C of 2017 in RSA No.3213 of 2017

For the reasons stated in the application, delay of 4 days
in re-filing of the appeal is condoned.

Application is allowed.

Main cases

This order of mine shall dispose of two regular second
appeals, arising out of same civil suit, preferred at the instance of the
appellant-plaintiff against the concurrent finding of fact whereby suit
for declaration claiming half share in the aforementioned suit
property of Amar Nath, her father, has been dismissed by the trial

Court and affirmed in appeal by the lower Appellate Court.

The plaintiff alleged through her attorney that Sita Bai was her mother, who died on 27.11.2005, though Sita Bai and Amar Nath had adopted Sarwan Kumar. Godha Ram was owner of the property. He died intestate and after his death, his only son Amar Nath had become owner of the property, who died without executing any Will leaving behind his widow, Sumitra Chanan-plaintiff, Sudarshan Bhatia-defendant No.1 and Sarwan Kumar, adopted son, thus, suit property was to be devolved upon legal heirs by way of natural succession being ancestral. Defendants are in illegal possession and raised construction without any right, title and interest upon half share of the plaintiff.

Defendant No.1 had appeared in person but thereafter proceeded ex parte.

Defendants No.2 and 3 filed joint written statement by raising numerous preliminary objections. On merits, it was stated that they had purchased the plot No.152, comprising of Khasra No.160-159/1 from their mother Smt. Parvati by way of inheritance, who had purchased the same from Govind Ram son of Attar Chand @ Gurditta on 25.11.1994 for valuable consideration. The aforementioned plot was allotted to Govind Ram by the Government after partition. Amar Nath had no concern with the plot in dispute. There was an undeveloped room, which was in existence on the plot in question having measurement of 4896 sq. yards. Earlier suit titled as 'Subhash Vs. Govind etc.' with regard to aforesaid plot was decreed by the trial Court on 24.12.1993 in favour of defendants and

thereafter, they had constructed a pucca house on the plot in question with their own expenses.

Plaintiff in support of aforementioned pleadings examined four witnesses and brought on record numerous documents whereas defendants examined three witnesses and tendered documents Ex.D1 and D2.

Learned counsel appearing on behalf of the appellant submitted that both the Courts below have abdicated in non-suiting the appellant for not proving documents by only producing photocopies, as they carried presumption of truth being 30 years old documents under Section 90 of the Indian Evidence Act.

I am afraid aforementioned argument of learned counsel for the appellant is not sustainable, as plaintiff miserably failed to discharge onus as per Section 101 of the Indian Evidence Act to prove ownership of Godha Ram vis-a-vis evidence of the defendants that they have inherited the plot in dispute from their mother, who had purchased the same from Govind Ram.

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. Resultantly, both the second appeals are dismissed.

(AMIT RAWAL)
JUDGE

May 03, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No