

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

**RSA No.4579 of 2017 (O&M)
Date of Decision.31.01.2019**

Parminder Singh and others

...Appellants

Vs

Anant Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Bhardwaj, Advocate
for the appellants.

-:-

AMIT RAWAL J. (ORAL)

C.M. No.11998-C of 2017

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

Application is allowed.

RSA No.4579 of 2017

The present regular second appeal is directed against the
concurrent finding of fact whereby the suit of the respondents-
plaintiffs for declaration and permanent injunction restraining the
appellants-defendants from alienating and creating third parties
rights, has been decreed by the trial Court and affirmed by the lower
Appellate Court.

The respondents-plaintiffs alleged that Chhaju Singh,
vendor sold the land in dispute vide sale deed dated 23.05.1980 but
the mutation was not entered and they become co-sharers. Defendant
No.1-Chhaju Singh was left with no right and title of the
property measuring 5 kanals 7 marlas but the defendants wanted to
dispossess the plaintiffs, therefore, cause of action accrued to file the

suit in the year 2010.

Defendant No.1 opposed the suit and admitted that he was co-sharer to the extent of 2/3rd share qua land measuring 48 kanals 4 marlas and alienated 5 kanals 7 marals and delivered possession of the said portion.

Defendants No.2, 3 and 8 filed the joint written statement and claim that they were bona fide purchasers of land measuring 35 kanals 4 marlas and 10 kanals 4 marlas being 2/3rd share of 15 kanals 6 marlas purchased vide sale deed dated 08.05.2002 for total sale consideration of ₹6,60,000/-.

The trial Court on the basis of pleading framed the following issues:-

- “1. Whether plaintiffs are entitled to the declaration to the effect that they are the co-sharers in possession of land measuring 5 kanals 7 marlas by virtue of sale deed dated 23.05.1980? OPP*
- 2. Whether the plaintiffs are entitled to the permanent injunction for restraining the defendants from alienating the suit property and from dispossessing the plaintiffs from the same? OPP*
- 3. Whether the plaintiffs have filed the present suit by concealing the material facts from the Court? OPD*
- 4. Whether the plaintiffs are stopped by their own act and conduct from filing the present suit? OPD*
- 5. Whether defendant No.2 and 3 are bona fide purchasers and as such their rights are protected under*

*Section 41 of the Transfer of Property Act? OPD**6. Relief.”*

In support of pleadings, plaintiff Dalip Singh examined himself as PW1 and Gurdev Singh as PW2 and brought on record registered sale deed dated 23.05.1980 as Ex.P1 and jamabandi for the year 2003-04 as Ex.P2 whereas defendant examined Parminder Singh as DW1, Amrinder Singh as DW2 and brought on record Ex.D1 to D7.

Mr. Ashok Bhardwaj, learned counsel appearing on behalf of the appellants submitted that simplicitor suit for declaration without plea of possession was not maintained as plaintiffs miserably failed to prove their possession as per Section 34 of the Specific Relief Act. The suit filed in the year 2010 claiming declaration was *ex facie* barred by law of limitation. The plaintiffs did not challenge the sale deed. In the absence of any challenge to the sale deed, it carried presumption of truth being registered document. On the other hand, defendants have been able to prove the ownership through jamabandies and as well as sale deeds. In support of aforementioned contentions relied upon the judgment rendered by Hon'ble Supreme Court in *Vinay Krishna vs. Keshav Chandra and another AIR 1993 (SC) 957* and this Court in *Jeeto Vs. Santa Singh 2006(2) RCR (Civil) 547*. On limitation, reliance was laid to *Prem Singh and others Vs. Birbal and others 2006(3) RCR (Civil) 381*.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit. The suit was not simplicitor for declaration with injunction and the decree

passed by the trial Court reads as under:-

“This suit on coming up before me (Sanjiv Kundi), PCS, Addl. Civil Judge (Sr. Divn) Sunam 24th day of April 2014 in the presence of Mr. Rajinder Singh Adv. Counsel for plaintiff and Sh. GS Sidhu, Advocate counsel for the defendants No.2, 3 and 8. Remaining defendants ex parte.

It is ordered that the suit of the plaintiffs is decreed in part with cost. The plaintiffs are held entitled to the declaration that they are the co sharers/co owners qua the suit land, as detailed and described in the head note of the plaint, to the extent of 5 kanal 7 marla, on the basis of the registered sale deed dated 23.05.1980 executed by the defendant no.1 in their favour and they are also held entitled to the necessary correction/entries in the revenue record in their favour of the basis of the registered sale deed dated 23.05.1980. The defendants are restrained, by issuing an injunction, from alienating or transferring the land measuring 5 kanal 7 marla, belonging to the plaintiffs, out of the suit land, as detailed and described in the head note of the plaint, in any manner, whatsoever, illegally and unlawfully, except in due course of law. However, the remaining relief, as sought by the plaintiffs, is declined.”

Therefore, objection of Mr. Bhardwaj with regard to maintainability of the suit qua declaration is hereby rejected. No

doubt, defendants have not been able to establish their possession except tendering jamabandi but the question arises whether Chhaju Singh, in view of the admission in the written statement of having sold the land and put into possession, was having a saleable right or title and interest in the property being co-sharer, which remained a mystery, for, he alleged to have 2/3rd share in the land measuring 48 kanals 4 marlas whereas the appellants-defendants had purchased the land as described above. It also remained a mystery whether any proceedings for partition being land of joint khata had been initiated but the fact of the matter is that declaration and injunction granted in view of the admission of the vendor and proof of the sale deed, is in accordance with law.

With regard to suit being barred by limitation, no issue was framed but the objection can always be taken, as per the provisions of Section 3 of the Limitation Act. The law of limitation on such point is no longer *res integra* as cause of action would arise to an owner when there is a threat to the possession. This view of mine is derived from ratio decidendi culled out by Division Bench of this Court in *Ibrahim Vs. Smt. Sharifan 1979 SCC Online P&H 186; AIR 1980 P&H 25*. Para 7 of the same reads as under:-

“7. It may be observed at the outset that the word 'first' occurring in Art. 58 of the Act is of no significance at all for deciding the issue of limitation so far as the facts of the case in hand are concerned as the main point that requires determination is whether mere entry of a mutation in the name of the defendant would furnish a cause of action to the plaintiff to file a suit for declaration or not. There is no dispute that mutation

was sanctioned in favour of the defendant after the death of Akbar and in case such an entry furnishes a cause of action, then certainly the suit would be barred by limitation. Even Mr. Aggarwal very fairly conceded this proposition. But what was argued by him was that mere entry of a mutation did not furnish any cause of action and in support of his contention he relied on a Division Bench judgment of this Court in Niamat Singh v. Danbari Singh etc, (1956) 58 PLR 461. In our view, the contention of the leaned counsel has considerable force. The plaintiff continued to be in possession of the entire property even after the sanction of the mutations in the name of the defendant after the death of her father Akbar or her mother Smt. Nanhi or her uncle Bhiku. The defendant was never given any share in the rent, nor was she given any produce out of the land of her share. In this situation, no cloud was cast on the title of the plaintiff by mere entry of the mutation in the name of the defendant. Further, there is no proof on the record to show that before April, 1969, by any act or assertion of the defendant the right of the plaintiff was ever actually jeopardised, The defendant is occupying a house in the village.”

In view of aforementioned situation, I do not find any illegality and perversity in the concurrent finding of fact and law 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

January 31, 2019
Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No