

RSA-5896-2017 (O&M)

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

**RSA-5896-2017 (O&M)
Date of decision : 27.03.2019**

Daljit Singh and others

... Appellants

Versus

Kamaljit Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Deepak Nayar, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the concurrent findings of fact, whereby the suit of the appellant-plaintiff for declaration to be owner in joint possession to the extent of 32 sq. yds, in respect of the property measuring 100 sq. yds., with consequent relief of permanent injunction, has been dismissed and affirmed in appeal.

The plaintiff asserted that Balwinder Singh son of Nihal Singh was owner of the house and they were tenants in the disputed property and carrying on the business under the name and style of Shashi Eggs Store and Golden Engineering Works. Vide sale deed dated 08.07.1999, Balwinder Singh sold the property to the plaintiff for a valuable consideration and the other two tenants by operation of law became tenants of plaintiff, but at the time of execution of the sale deed, Balwinder Singh concealed the fact that he had taken the loan from State Bank of India as well as decree for

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recovery of loan amount in favour of Bank. The plaintiff at one time was making some repairs and alternations in the suit property, the Bank had filed the suit for permanent injunction, which was withdrawn in the year 2003. The property to the extent of 68 sq. yds., was put to auction for recovery of loan amount. The plaintiff himself claimed to be bona fide purchaser and the objection, in this regard, was filed, but the same was dismissed, by the Courts below. Out of the land 100 sq. yds., the declaration sought was to the extent of land measuring 32 sq. yds..

The defendants on appearance, opposed the suit and admitted the factum of dismissal of the objection. It was submitted that earlier, the suit property was owned and possessed by Dhan Kaur, who transferred the land, by way of transfer deed to Nihal Singh. The lessee rights were purchased by Nihal Singh, who had three sons, namely, Darshan Singh, Harbhajan Singh and Balwinder Singh, whereas in the year 1985, there was partition. Balwinder Singh, from whom, the deceased plaintiff alleged to have purchased the land, had no right and title to sell the same as he had already mortgaged the same with the Bank.

Learned counsel for the appellant-plaintiff submitted that both the Courts below have abdicated in erroneously non-suiting the plaintiff, by holding that the plaintiff failed to prove the ownership of Balwinder Singh son of Nihal Singh to the extent of 100 sq. yds., but the fact of the matter is that Sub-Registrar proved the factum of registration of sale deed. Ex.D5 reflected the partition amongst three brothers.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Nayar, for, it has not been proved that Balwinder Singh

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was the owner of 100 sq. yds., as (Ex.D5), partition of 1985, revealed that Darshan Singh, Harbhajan Singh and Balwinder Singh, all sons of Nihal Singh, partitioned the land comprised in Khana shmari No.1509/22, Khasra No.93, in other word, Balwinder Singh was not having the legal right to sell the land, as the land fallen to his share, was already mortgaged, which was purchased by the defendant in auction proceedings. The said matter cannot be agitated in the independent suit.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the concurrent findings of fact, much less, no substantial question of law arises for determination. No ground is made out for interference.

The present second appeal is accompanied by an application seeking condonation of delay of 90 days in filing. The application is bereft of any reasonable explanation.

Accordingly, the second appeal is dismissed on the ground of merit as well as limitation.

27.03.2019

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**