

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

**RSA No.5950 of 2017 (O&M)
Date of Decision.09.05.2019**

Makhan Singh and others

...Appellants

Vs

Balkar Singh and another

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kamal Narula, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

C.M. No.15615-C of 2017

For the reasons stated in the application, delay of 39 days
in filing of the appeal is condoned.

Application is allowed.

Main case

The present regular second appeal is directed at the
instance of the appellants-defendants against the judgment and decree
of the lower Appellate Court whereby suit of the respondents-
plaintiffs for declaration dismissed by the trial Court, has been
allowed, despite the fact that defendants were ex parte.

The plaintiffs alleged that one Gurdit Singh has two sons
Makhan Singh and Dalip Singh. They were owners of land
measuring 2500 marlas. Defendant No.1 indulged into sale of land
more than his share and therefore, cause of action accrued to claim
declaration in respect of land measuring 21 kanals 8 marlas by
challenging transfer deed dated 23.4.2007 executed by defendant
No.1 in favour of his sons i.e. defendants No.2 to 6 regarding 47

kanals of land.

Defendants opposed the suit and stated that defendant No.1 had one sister Nihalo and her share was inherited by him only and therefore, sale was not in excess but as per his share.

Dalip Singh examined himself as PW1 and tendered documents Ex.P1 to P4 whereas defendants were ex parte.

The trial Court dismissed the suit by the lower Appellate Court reversed the finding by noticing the revenue record.

Mr. Narula, learned counsel appearing on behalf of the appellants submitted that the finding of fact and law arrived at by the lower Appellate Court by non-suiting the appellants-defendants, even though they were ex parte, is based upon mis-interpretation and misreading of the revenue record. The share of sister had devolved upon defendant No.1 alone as per provisions of Section 15 of the Hindu Succession Act and therefore, transfer was not in excess of his share.

I am afraid aforementioned argument would not be sustainable for the simple reason that even if sister died issueless, her share would not devolve upon defendant No.1 only but equally upon father and plaintiffs. The joint khata revealed that sale deed/transfer deed was in excess of share. In such circumstances, the suit has been decreed. The evidence brought on record has gone unrebutted and particularly, the revenue record which carries presumption of truth as per Section 44 of the Land Revenue Act, as defendants remained ex parte.

In view of such circumstances, I do not find any

illegality and perversity in the finding rendered by the lower Appellate Court being the last court of fact and law, 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

May 09, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No