

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

RSA No.634 of 2017 (O&M)

Date of decision:12.03.2019

Harinder Singh

... Appellant

Vs.

Malkiat Singh and others

... Respondents

RSA No.725 of 2017 (O&M)

Harinder Singh

... Appellant

Vs.

Nirmal Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arihant Jain, Advocate
for the appellant.

AMIT RAWAL J.

This order of mine shall dispose of two Regular Second Appeals bearing Nos.634 and 725 of 2017 at the instance of the appellant-plaintiff against the judgment and decree of the Lower Appellate Court whereby suit of the plaintiff decreed by the trial Court, has been dismissed.

The plaintiff sought the joint possession to the extent of 1/3rd share out of the property as co-parcener and declaration by challenging two sale deeds dated 29.11.2001 and 29.05.2002 executed by defendant no.1 in favour of defendant nos.1A and 1B respectively with injunction restraining

the defendants from alienating the suit property.

By arraying defendant no.1-Dial Singh, who died during the pendency of the suit it was alleged that Fateh Singh, grandfather of the plaintiff had died on 16.1.1973 and the suit property was inherited by Dial Singh-defendant no.1 by way of natural succession. Fateh Singh was owner in possession of the landed property in village Sihoran District Ambala and at Sirhand, Tehsil and District Fatehgarh Sahib. The grandfather of the plaintiff sold the property at village Sihoran and purchased the agricultural land in the name of defendant no.1 in village Brahman Majra Tehsil and District Sirhand. Defendant Dial Singh sold some ancestral property of the aforementioned village in the year 1994 and in lieu of the sale proceeds, purchased the property in his name, thus, for all intents and purposes, the nature and character of the property was ancestral and the plaintiff had a right in the property by birth, therefore, defendant no.1 could not transfer the land by way of impugned sale deeds.

The defendants opposed the suit and claimed that plaintiff had already been separated from defendant no.1 after obtaining 2 kallas of land and receiving a sum of Rs.1.00 lakh vide compromise deed Ex.CX and therefore, had no concern. The nature of the property stated to be self-acquired. Defendant no.1A also taken the same stand and claimed himself to be owner in possession of the suit property.

Since the parties were at variance, the trial Court framed the following issues:-

“1. Whether the plaintiff is entitled for joint possession to

the extent of 1/3 share as prayed for ?OPP

2. *Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*

3. *Whether the plaintiff is entitled for declaration as prayed for ?OPP*

4. *Whether the suit of the plaintiff is not maintainable?OPD*

4A *Whether the defendants no.1A and 1B are bonafide purchaser from defendant no.1 for valuable consideration?OPD 1A and 1B.*

5. *Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD*

6. *Relief.”*

The plaintiff in support of his case, examined six witnesses and brought on record the documents Ex.P1 to Ex.P59, Ex.PW2/C, Ex.PW5/A to Ex.PW5/M and Ex.PX to establish on record the nature and character of the property to be ancestral. On the other hand, defendants examined two witnesses and brought on record Ex.DW1/A, Ex.D1 to Ex.D5, Ex.DX.

Mr. Arihant Jain, learned counsel appearing on behalf of the appellant submitted that Lower Appellate erroneously reversed the findings of the trial Court as from the documentary evidence brought on record, it has, unclinichly been proved on record that property at the hands of defendants was ancestral. The trial Court after examining the every document threadbare rightly set aside the sale deeds. The First Appellate

Court mis-interpreted the legal and factual position as failed to notice the source for purchase of the land out of the proceeds joint property. The defendants did not lead evidence qua issue of maintainability. The question of estoppel by relying upon alleged compromise was not involved as it pertained to different litigation. The findings of fact and law are totally based upon the mere surmises and conjectures, much less without jurisdiction resulting into miscarriage of justice and perversity.

I am afraid the aforementioned arguments are not sustainable in the eyes of law for the simple reason that plaintiff has miserably failed to prove the nature and character of the property to be ancestral as no evidence has been placed on record with regard to holding the property from three generations, he being fourth generation as per para 221 of Hindu Mulla Law (21st Edition), having a right by birth. Except reference to the property of Fateh Singh, grandfather, no evidence has been placed on record to establish that Fateh Singh inherited the property from father i.e. great grandfather of the plaintiff. All the jamabandies did not prove the aforementioned fact. In civil suit no.30 dated 07.02.2001, preferred by the plaintiff against his father Dial Singh, compromise, Ex.D1 was entered into wherein the plaintiff admitted to have obtained the land and cash as referred to in the written statement. For all intents and purposes, Harinder Singh had already got his share from the estate of the Dial Singh, thus, in such circumstances, he was estopped to challenge the sale deeds. As per the report of Kanungo and jamabandi for the years 1915-16, Nathu, Fateh Singh and Sunder all sons of Gobind Singh were recorded to be owners.

The Lower Appellate Court, in my view, being the last Court of fact and law correctly re-appreciated the evidence to form the different opinion than the one arrived at by the trial Court. Such findings are perfectly legal and justified. No ground for interference is made out.

Resultantly, the regular second appeals are dismissed.

(AMIT RAWAL)
JUDGE

March 12, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No