

**In the High Court of Punjab and Haryana at Chandigarh**

**Date of Decision:23.1.2019**

**RSA No. 844 of 2018(O&M)**

**Sukhdev Singh**

**---Appellant**

**vs.**

**Rani Kaur**

**---Respondent**

**RSA No.933 of 2018(O&M)**

**Sukhdev Singh**

**---Appellant**

**vs.**

**Rani Kaur**

**---Respondent**

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

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**Present:** Mr. Deepak Aggarwal, Advocate  
for the appellant

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**Rekha Mittal, J.**

This order will dispose of RSA No. 844 of 2018 and 933 of 2018 as these have emerged out of judgment and decree dated 23.10.2017 passed by the Additional District Judge, Bathinda whereby appeal against the decree and judgment dated 3.4.2017 passed by the trial court, filed by the respondent-plaintiff was allowed and cross objections preferred by the defendant-appellant were dismissed.

Rani Kaur, plaintiff-respondent staked her claim to suit property on the premise that she purchased the same from Karam Singh,

Harbans Kaur, Mohinder Kaur, Amarjit Singh and Ranjit Singh and mutation No. 8043 in this regard was sanctioned. Husband of the plaintiff and defendant were residing together and defendant requested him that he was in need of some place for keeping his household things for some time and the plaintiff and her husband obliged him. The defendant is neither owner nor co-sharer of the suit property. He refused to hand over vacant possession of the suit property despite repeated requests.

The appellant-defendant filed the written statement raising legal objections inter alia cause of action; locus standi, maintainability of the suit; suit being bad for non-joinder of necessary parties; estoppel, concealment of facts etc. On merits, it was averred that Hazara Singh son of Dasaunda Singh was owner in possession of gair mumkin abadi and ruri land measuring 1 kanal 5 marlas bearing khasra Nos. 448(1-2) (gair mumkin abadi) and 536 (0-3) (gair mumkin ruri) situated at village Lehra Bega. About 40 years ago, Hazara Singh shifted to Rajasthan and sold the aforesaid land to his nephews Jaggar Singh @ Ujagar Singh and Baldev Singh sons of Dalvar Singh i.e. 1 kanal to Jaggar Singh @ Ujagar Singh and 5 marlas to Baldev Singh through a writing and handed over physical possession of the said land to them. They sold abadi land measuring 10 marlas to the defendant and Malkiat Singh, his brother in equal shares with physical possession for Rs. 5000/- vide writing dated 17.4.1987. Karam Singh etc. were neither competent nor authorized to execute sale deed in favour of the plaintiff in respect of the same land. The entries in the revenue record are illegal, null and void and against law and facts. The defendant and Rupinder Singh, his son has already filed a suit for

declaration and permanent injunction challenging the alleged entries in the revenue record, the sale deed as well as mutation in favour of the plaintiff. Jaggar Singh @ Ujagar Singh sold remaining abadi land to the defendant and Malkiat Singh his brother for a sale consideration of Rs, 9,900/- vide writing dated 28.6.1991. Malkiat Singh, brother of the defendant executed a legal and valid registered Will No. 140 dated 30.8.2010 bequeathing his entire movable and immovable property in favour of Rupinder Singh son of the defendant. Malkiat Singh died on 22.9.2010 and his estate has been succeeded by Rupinder Singh. The possession of the defendant and his son is open, hostile, notorious, uninterrupted, continuous, illegal, unauthorized to the knowledge of the plaintiff and all other concerned for the past more than 12 years. All other material averments of the plaint were denied with a prayer for dismissal of the suit.

The trial court framed issues, reproduced in para 4 of the judgment of said court. Having heard counsel for the parties in the light of materials on record, the trial court answered the material issues against the respondent-plaintiff and dismissed the suit with costs.

As has been noticed hereinbefore, appeal preferred by the respondent was allowed and cross objections filed by the appellant were dismissed. As a consequence, suit filed by the respondent was decreed with a direction to the defendant-appellant to deliver possession of suit property to the respondent-plaintiff.

Counsel for the appellant would argue that Jaggar Singh @ Ujagar Singh and Baldev Singh sons of Dalvar Singh by way of writing dated 17.4.1987 sold 10 marlas of abadi, dimensions whereof are given in

writing Ex. PW3/A on payment of Rs. 5,000/- and possession of land was delivered in favour of the appellant. It is further argued that in view of writing/agreement dated 17.4.1987, the appellant can protect his possession by invoking Section 53-A of the Transfer of Property Act(in short "the Act'). It is further argued that as Sh. Hazara Singh had already sold land measuring 1 kanal 5 marlas bearing khasra Nos.448 and 536 in favour of Jaggar Singh @ Ujagar Singh and Baldev Singh sons of Dalvar Singh, any such sale by Karam Singh etc., successors-in-interest of Hazara Singh in favour of respondent Rani Kaur is of no legal consequence as successors of Hazara Singh were left with no title in suit land after sale by their predecessor in favour of Jaggar Singh @ Ujagar Singh and Baldev Singh. It has further been argued that the respondent-plaintiff has failed to adduce satisfactory much less cogent and convincing evidence to prove that Hazara Singh has since passed away and his successors in interest could execute a sale deed in respect of land previously owned by said Hazara Singh.

I have heard counsel for the appellant, perused the paper book particularly the judgments impugned and photo copy of writing dated 17.4.1987 propounded by the appellant and statement of Rani Kaur PW1.

Be that as it may, the appellant has claimed title to land measuring 10 marlas on the basis of writing dated 17.4.1987. There cannot be denial that right in immovable property of value of more than Rs. 100/- can not be transferred except by way of a registered document. In this view of the matter, plea of the appellant that he became owner in possession of 10 marlas of land on the basis of writing dated 17.4.1987 is patently misconceived and legally unsustainable.

The question for consideration is whether the appellant can protect his possession on the basis of part performance provided in Section 53-A of the Act.

The appellant has raised the plea that Hazara Singh transferred land measuring 1 kanal 5 marlas in favour of his nephews Jaggar Singh @ Ujagar Singh and Baldev Singh. No such document in respect of sale of land by Hazara Singh in favour of Jaggar Singh @ Ujagar Singh and Baldev Singh has seen the light of day in the present case. No sooner the appellant failed to prove any title with Jaggar Singh @ Ujagar Singh and Baldev Singh, he cannot claim any right in suit land much less to protect his possession by invoking Section 53-A of the Act. The matter would have been different had Sh. Hazara Singh executed an agreement of sale in favour of the appellant and on the basis thereof, the appellant had sought to protect his possession in respect of 10 marlas of land. In this view of the matter, I find it difficult to accept contention of the appellant that the Appellate Court has committed an error much less perversity by accepting appeal of Rani Kaur and dismissing the cross objections filed by the appellant.

To be fair to the appellant, counsel has raised a contention that Rani Kaur has not proved the factum of death of Hazara Singh conferring right upon his successors to execute sale deed in her favour. Perusal of judgments by the courts would reveal that no such plea was raised by the appellant that Hazara Singh is still alive, therefore, his class-I heirs are incompetent to transfer his land during life time of Hazara Singh.

In view of what has been discussed hereinbefore, finding no

merit, the appeals fail and are accordingly dismissed in limine with no order  
as to costs.

**(Rekha Mittal)**  
**Judge**

**23.1.2019**  
paramjit

Whether speaking/reasoned: Yes  
Whether reportable : Yes/No