

In the High Court of Punjab and Haryana at Chandigarh

RSA- 6056 of 2018 (O&M)
Date of Decision:13.2.2020

Khushal Chand

---Appellant

vs.

Dharam Chand since deceased through Lrs and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Vishal Sodhi, Advocate
for the appellant

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit of the plaintiff asserting his having become owner in possession of land measuring 73 kanals, detailed in para 1 (un-numbered) of judgment of the trial court was dismissed but he was allowed alternative relief of permanent injunction with the findings that he is in settled possession and he can not be dispossessed therefrom except in due course of law vide judgment and decree dated 25.3.2015 passed by the trial court.

The judgment and decree passed by the trial court led to filing of two appeals i.e. one by Khushal Chand and other by defendants No. 2 and 3 in whose favour the suit land was sold by defendant No. 1 (father of the appellant) vide sale deed No. 3229 dated 19.2.2010.

The appellant-plaintiff staked his claim qua ownership of the suit land on the basis of family settlement which took place between him and his father (defendant No. 1) in April 2007 with the averments that revenue record showing defendant No. 1 to be owner of suit land is wrong and liable to be corrected. He further assailed sale deed No. 3229 dated 19.2.2010 executed by defendant No. 1 in favour of defendants No. 2 and 3 being a sham transaction and not binding upon right of the plaintiff. Mutation No. 6490 dated 24.2.2010 sanctioned on the basis of aforesaid sale deed is branded as illegal, null and void.

Counsel for the appellant did not make any submissions to assail the judgments negating his plea qua family settlement between him and his father in April 2007 on the basis whereof he asserted his claim to be owner in possession of disputed land, admittedly, owned by his father Sh. Dharam Chand defendant No. 1.

Counsel, in response to a query as to how Dharam Chand could relinquish his right in suit land without a legal and valid document to be executed in this regard, is not in a position to give any satisfactory reply with regard to his claim of ownership of land in dispute. However, he repeatedly argued that if sale deed dated 19.2.2010 executed by defendant No. 1 in favour of defendants No. 2 and 3 is set aside being a sham transaction, the property would ultimately be inherited by him at least to the extent of 1/4th share being one of the class-I heirs of Dharam Chand (since deceased). It is further argued that respondents No. 2 and 3 purchasers of suit land under sale deed aforesaid did not examine either of the attesting witnesses of the sale deed in compliance with the provisions of Section 68

of the Evidence Act nor they adduced sufficient evidence to prove that they had paid Rs. 25 lakh towards sale consideration to Sh. Dharam Chand. It is argued that one of the purchasers appeared in the witness box and stated that funds were available with him on account of sale of paddy crop but he has not produced any evidence in this regard. In support of his contention, he has relied upon Division Bench judgment of this Court **Harnam Singh and others vs. Dalip Singh and another 1964 PLJ 104.**

I have heard counsel for the appellant and perused the paper book particularly the judgments impugned.

Be that as it may, there is no challenge to findings of the courts negating plea of the appellant that he has become owner of the suit land on the basis of alleged family settlement between him and his father. Dharam Chand, the owner of suit land and executant of sale deed dated 19.2.2010 never denied execution of sale deed nor assailed the said sale deed on any count whatever. As the appellant never became owner of the suit land during life time of his father, he is stranger and third party in respect of the sale effected by the real owner in favour of its purchasers vide registered sale deed dated 19.2.2010, therefore, it is not open for the appellant to contend that the sale is without consideration or liable to be set aside on this ground. In this context, reference can be made to judgment of Hon'ble the Supreme Court **Muddasani Venkata Narsaiah (d) through Lrs vs. Muddasani Sarojana 2016 (3) RCR (Civil) 236.**

So far as plea of the appellant with regard to non-examination of one of the attesting witnesses by relying upon Division Bench judgment **Harnam Singh and others' case (supra)**, Dharam Chand seller under the

sale deed is a party to the suit and he never denied execution of agreement nor assailed its validity on any count. In the given circumstance, the appellant can not derive any advantage to his contention from the referred authority wherein the executant of the document was not a party to the litigation. This apart, Section 54 of the Transfer of Property Act, 1882 (in short “the Act”) deals with definition of sale and sale how made. It is none of the requirements of Section 54 of the Act that sale deed requires attestation by a particular number of witnesses nor attract the provisions of Section 68 of the Evidence Act. Moreover, under Section 68 of Evidence Act, attesting witness of a document is required to be examined only if execution of the document is denied by its executant. Examined from any angle, submissions made by counsel to assail sale deed dated 19.2.2010 are bereft of merit and had rightly been rejected by the courts. Analyzed from any angle, the appeal sans merits and is dismissed.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay of 38 days in refiling the appeal is of academic relevance.

(Rekha Mittal)
Judge

13.2.2020
paramjit

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