

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

119

**RSA-151 of 2021 (O&M)
Decided on : 06.07.2021**

Daud (since deceased) through LRs

... Appellants

Versus

Sehdev & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Sumit Gupta, Advocate, for the appellants.

(The proceedings are being conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral)

CM-1111-C-2021

Application for condoning the delay of 336 days in re-filing the appeal, is allowed, in view of the averments made in the application, duly supported by affidavit. Delay of 336 days in re-filing the appeal is, hereby, condoned.

CM stands disposed of.

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The present appeal, filed under Section 100 CPC, by the legal heirs of the deceased-plaintiff, is directed against the concurrent findings of the Courts below dated 26.10.2015 and 03.12.2018.

The suit for declaration and permanent injunction was filed against the defendants on the ground that the agricultural land in dispute was previously possessed by the proprietors/co-sharers. The plaintiff had been put in possession of the suit land which was used by the proprietors/co-sharers as per entry No.9 for the year 2002-2003. On the strength of entry in Bahi of the plaintiff regarding the receipt of the sale consideration of Rs.92,600/- on

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15.09.1991, the suit came to be filed on 07.11.2012. It was alleged that the plaintiff was in possession much before 1960 and he was still in possession. Resultantly, declaration of permanent injunction was sought on the ground that the defendants had no right and title in the suit property and the plaintiff had constructed on the said suit land in a particular portion over Killa No.12/11/2(1-6).

The defence of the defendants was that plaintiff was neither owner/purchaser nor in possession of the suit property and had no concern with it. The entries of Bahi were false and the said document had been procured by the plaintiff. The defendants had no concern with the alleged Bahi in any manner.

The Trial Court framed the following issues on 21.03.2015:

1. Whether the plaintiff is entitled to decree for declaration to the effect that the plaintiff is lawful owner as co-sharer of the suit land detailed in para no.1 of the plaint by virtue of oral purchase before 1960 for consideration as mentioned in Bahi entry and the defendants have sold their rights of co-sharership and possession as reflected in column no.5 & 9 of the jamabandi and the revenue entries are wrong and not binding upon his rights and the same are liable to be rectified in his favour? OPP
2. Whether the plaintiff is entitled to decree for permanent injunction restraining the defendants from interfering in his lawful ownership and possession over the suit land and from alienating the same in any manner? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff has no locus standi to file the present suit? OPD

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5. Whether the plaintiff has suppressed the true and material facts from the court? OPD

6. Relief.

After examining the statements given by the four witnesses produced by the plaintiff-appellant and the defendants who also produced four witnesses, a finding was recorded that the Bahi itself does not mention that the ancestors of the defendants sold out some share in the suit property to the plaintiff. There were only entries with regard to money transaction and not that any portion of the suit land had been sold out to the plaintiff by the defendants. The version of the plaintiff was not believed by holding that there was no specific time and date mentioned as to when the suit land was sold. Revenue records were examined and a finding was recorded that the Gram Panchayat was the owner of the suit property and the name of the defendants were recorded as cultivators in column No.5.

The prayer for decree of permanent injunction was also declined on account of the fact that there was no evidence to show that the plaintiff was in possession over the suit property and as per the statement of PW1 who himself admitted that Sehdev/defendant etc had placed bitodhas/chhapper over the suit property. Therefore, the plaintiff was held not entitled for the relief of permanent injunction while noting that the Bahi was maintained by the relatives of the plaintiff himself and was not a record of any Government agency. The admission of the plaintiff was also noticed that the signatures and the thumb impression of the defendants who sold the share of the suit property was not there and thus, reliance upon the Bahi was rightly discarded.

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It was also noticed that an averment was made that purchase was done in the year 1960 but nothing was shown from the revenue record regarding the possession and neither any effort was made to get the record corrected. Thus, issues No.1 & 2 regarding the right of declaration as a co-sharer and injunction were rightly declined by the Addl.Civil Judge (Sr.Divn.) Hathin on 26.10.2015

The said findings have been upheld by the Lower Appellate Court vide judgment and decree dated 03.12.2018, on the additional issue that mere placing of bricks or tying buffaloes did not mean possession by noting that the record would show that the land of the Gram Panchayat was involved and the presence of the defendants was recorded in the column of possession. Regarding the entry in the Bahi, the same did not mention the ancestors of the defendants. In such circumstances, keeping in view the admission which was made by the plaintiff himself in the cross-examination, the appeal had been dismissed.

Thus, from a perusal of the above, it would be clear that the land in question was found to be belonging to the Gram Panchayat which has not been impleaded as party. The plaintiff, thus, sought injunction against the co-sharers on the strength of an entry made in the Bahi in the year 1991, at a belated stage, after a period of 10 years. The possession is also stated to be of the year 1960, much prior to the entry made in the Bahi in 1991 and no explanation has been given as to how they came to possession earlier though the Courts below have found the possession in favour of the defendants, as per the revenue records. The reasoning which have been recorded by the

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Courts below for declining the grant of permanent injunction is justified and does not suffer from any infirmity which would warrant interference in a Regular Second Appeal. Apparently, the appellant has suppressed material facts from the Court and is seeking the declaration of ownership of the land which is owned by the Gram Panchayat, without impleading the same.

Accordingly, in view of the above, this Court is of the opinion that no substantial question of law arises for consideration which would warrant interference by this Court with the well reasoned orders passed by the Trial Court which has been duly upheld by the Lower Appellate Court. Resultantly, finding no merit in the present appeal, the same is, hereby, dismissed in limine.

July 06, 2021
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No