

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

**RSA-1679 of 2018 (O&M)
Date of decision: 22.09.2022**

Sukhdev Singh and another

..Appellants

Versus

Ram Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Tribhawan Singla, Advocate,
for the appellants.

ANIL KSHETARPAL, J(Oral)

While assailing the findings of fact arrived at by the First Appellate Court, the plaintiffs have filed the present appeal.

The plaintiffs are children of late Sh. Arjun Singh son of Sh. Harnam Singh. They filed a suit claiming to be the owners in possession of the 'Gair Mumkin Abadi' area comprised in Khasra No.700 (1 Kanal 7 Marlas) in which a room, kitchen, bathroom and a toilet has been constructed. The plaintiffs sought a decree of permanent injunction restraining the defendants from interfering in their peaceful possession.

The defendants while contesting the suit claim that the property in dispute was sold by Sh. Gujjar Singh son of Sh. Charhat Singh, Sh. Arjun Singh, Sh. Bachan Singh sons of Sh. Harnam Singh to Sh. Puran Singh and Sh. Nikka Singh sons of Sh. Mastan Singh vide registered sale deed dated 04.01.1936 on payment of a total sale consideration of Rs.130/-. The plaintiffs' father Sh. Arjun Singh had also thumb marked the sale deed.

However, during the consolidation of holdings, the authorities committed a

mistake and the entry was made in favour of the defendants only in the cultivation column and not in the ownership column. The defendants also claim that their father partitioned the property vide the writing dated 11.04.1966 amongst the defendants.

The trial Court dismissed the suit on the ground that in the sale deed pre-consolidation numbers have been mentioned but no effort has been made to connect the aforesaid sale deed with the new khasra numbers assigned post the consolidation of holdings and the original sale deed has not been produced.

During the pendency of the first appeal, an application filed under Order XLI Rule 27 of the Code of Civil Procedure, 1908 to lead additional evidence, by the defendants was allowed on 21.09.2016. The original sale deed dated 04.01.1936, naksha haqdarwar, khatauni Istemal were produced apart from examining the DW5-Abdul Sattar. The First Appellate Court culled out the following points which arose for adjudication:-

- “(i) Whether *the sale deed dated 04.01.1936 executed by Gujjar Singh son of Charhat Singh and Bachan Singh son of Harnam Singh, in which Arjan Singh was also a consenting party transferred a valid title in favour of Puran Singh and Nikka Singh, predecessors-in-interest of the appellants with regard to land admeasuring 13 biswas?*
- (ii) *Whether the defect in the revenue record would eclipse the valid title of Puran Singh and Nikka Singh or their successor in interest on the basis of the sale deed dated 4.1.1936?*
- (iii) *Whether the respondents-plaintiffs are entitled to the relief of permanent injunction?”*

The First Appellate Court has accepted the appeal.

This Bench has heard the learned counsel representing the

appellant at length and with his able assistance perused the paper book and the record which was requisitioned.

The learned counsel representing the appellants submits that Sh. Arjun Singh is not the executant of the sale deed, therefore, his share in the property will continue to vest in the plaintiffs. He submits that merely because late Sh. Arjun Singh has thumb marked the sale deed as a witness, the proprietary rights of late Sh. Arjun Singh qua his share in the property would not get transferred.

The learned counsel representing the appellants has read over the Punjabi translation of the sale deed dated 01.04.1936. It is evident that Sh. Gujjar Singh and Sh. Bachan Singh have recited in the sale deed that in a family settlement, the entire plot measuring 13 biswas has come to their share. Late Sh. Arjun Singh being a witness has acknowledged the same. The sale deed was executed more than 80 years before the filing of the suit. Thus, after acknowledging that the property which was the subject matter of sale has fallen to the share of Sh. Gujjar Singh and Sh. Bachan Singh and the plaintiffs cannot claim any share. Late Sh. Arjun Singh during his life time never disputed the correctness of the sale deed.

Keeping in view the aforesaid facts, this Court does not find any ground to interfere.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

September 22, 2022

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**(ANIL KSHETARPAL)
JUDGE**

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