

101

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

**RSA-3326-2018 (O&M)
Reserved on 05.08.2022
Date of decision : 10.08.2022**

Daljeet Singh

.....Appellant

Versus

Suman and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vineet Chaudhary, Advocate for the appellant.

ALKA SARIN, J.

The present regular second appeal has been preferred by the plaintiff-appellant against the concurrent findings of fact returned by both the Courts below and dismissing his suit for declaration and permanent injunction.

The plaintiff-appellant sought a decree for declaration to the effect that mutation No.3536 dated 01.09.2008 and subsequent sale deed No.7521 dated 01.12.2008 executed by the defendant-respondent Nos.1 to 3 in favour of defendant-respondent Nos.4 and 5 in respect of the suit property are illegal null and void. He also sought a decree for permanent injunction restraining the defendant-respondents from taking possession of any specific portion of the suit land. The defendant-respondent Nos.1 to 3 are the wife and daughters, respectively, of Mukhtiar Singh, brother of the plaintiff-appellant. The plaintiff-appellant claims that he along with his sisters Laxmi, Shanti, Ved Kumari, Saroj and brother Mukhtiar Singh is joint owner as co-sharer to the extent of 1/6th share in the suit land. He further stated that he

and his sisters are in joint possession of the suit land his brother Mukhtiar Singh is not in possession of the suit land because he is not residing in the village though Mukhtiar Singh visits the village often. According to the plaintiff-appellant the wife and daughters of Mukhtiar Singh i.e. the present defendant-respondent Nos.1 to 3, had filed a civil suit for declaration against Mukhtiar Singh and the General Public with regard to the agricultural land of Mukhtiar Singh situated in villages Tasorala and Raipur Viran, Tehsil Naraingarh, District Ambala. The said civil suit was decided by the Court vide judgment and decree dated 01.05.2000 and the Court declared that Mukhtiar Singh was a dead person. On the basis of the above judgment and decree dated 01.05.2000, the defendant-respondent Nos.1 to 3 got the share of Mukhtiar Singh in the suit land situated in village Bhatgaon Dungran, Tehsil and District Sonapat mutated in their favour vide mutation No.3536 dated 01.09.2008 and thereafter on the basis of the said mutation the defendant-respondent Nos. 1 to 3 sold the land measuring 14 Kanals 14 Marlas of their $\frac{1}{6}^{\text{th}}$ share to the defendant-respondent Nos.4 and 5 vide registered sale deed No.7521 dated 11.12.2008. The plaintiff-appellant challenged the said mutation and sale deed claiming that during life time of their father, Tulsi, an oral family settlement had taken place whereby the land situated in villages Tasorala and Raipur Viran, Tehsil Naraingarh, District Ambala fell to the share of Mukhtiar Singh and Mukhtiar Singh relinquished his share in the suit property and in this manner there were only five co-sharers in the suit property at Sonipat i.e. the plaintiff-appellant and his sisters.

Defendant-respondent Nos.1 to 3 initially appeared but later on they failed to appear before the Trial Court and were proceeded against ex-

parte vide order dated 27.04.2012. Defendant-respondent Nos.4 and 5 filed written statement controverting the case of the plaintiff-appellant and stated that they are bonafide purchasers and had purchased the suit property from the true owners and that the legal heirs of Mukhtiar Singh were exclusive owners in possession of the suit property even prior to the execution of the sale deed and now they (the defendant-respondent Nos.4 and 5) were owners in possession of their share in the suit property from the date of execution of the sale deed.

The Trial Court framed the following issues :

1. Whether the plaintiff is entitled for declaration to the effect that mutation bearing No.3536 dated 01.09.2008 and subsequent sale deed bearing No.7521 dated 01.12.2008 are illegal, null and void and not binding upon the rights of the plaintiff and are liable to be set-aside? OPP
2. Whether the plaintiff is entitled for injunction whereby defendants be restrained from taking possession of any specific killa number of the suit land without getting the same partitioned? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiff has no cause of action or locus- standi to file the present suit? OPD
5. Whether the plaintiff has not affixed the ad-velorum court fee on the plaint? OPD
6. Relief.

On the basis of the pleadings of the parties and the evidence produced, vide judgement and decree dated 30.03.2015 the Trial Court dismissed the suit of the plaintiff-appellant holding inter-alia that the plaintiff-appellant had failed to prove that any family settlement took place during life time of Tulsi whereby Mukhtiar Singh relinquished his share in the suit property and that since the factum of a family settlement had not been established, Mukhtiar Singh was co-owner in joint possession to the extent of 1/6th share in the suit land. Aggrieved by the judgment and decree passed by the Trial Court, an appeal was preferred by the plaintiff-appellant and the same was also dismissed vide impugned judgment and decree dated 21.02.2018. Hence, the present regular second appeal by the plaintiff-appellant.

Learned counsel for the plaintiff-appellant has contended that the Courts below have mis-construed the evidence on the record and have illegally his suit. According to counsel, it was proven that Mukhtiar Singh was alive and also that the existence of the family settlement was firmly established and therefore the suit of the plaintiff-appellant ought to have been decreed.

Heard.

Though an argument has been raised that Mukhtiar Singh, brother of the plaintiff-appellant, was alive and therefore the judgement and decree dated 01.05.2000 declaring him dead was illegal and erroneous, the fact of the matter is that the said judgement and decree dated 01.05.2000 has not been set aside by any Court and still holds the field. Moreover, the plaintiff-appellant cannot question that judgement and decree in the present suit which is qua the mutation and sale deed. Though the counsel for the

plaintiff-appellant vehemently contended that the judgements and decrees of both the Courts below were against the record, he could not point to any cogent and convincing evidence which had been mis-read by the Courts. Nothing has been pointed out to show that the factum of a family settlement stood proved on the record. The judgement of the lower Appellate Court mentions that apart from himself, the plaintiff-appellant examined no other witness. The sisters of the plaintiff-appellant also did not come forward to depose in his favour.

No other argument has been raised by learned counsel for the plaintiff-appellant. No question of law, much less any substantial question of law, arises for determination in the present case.

In view of the above, I do not find any illegality and infirmity in the judgments and decrees passed by the Courts below. The appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

10.08.2022
tripti

(ALKA SARIN)
JUDGE