

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIAGRH

RSA No.1085 of 1990 (O&M)

Reserved On: 09.08.2023

Decided on: 23.08.2023

Dalla (deceased) through LRs

...Appellant

Versus

Manphool and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Ms. Aashna Aggarwal, Advocate
Mr. Vishal Pundir, Advocate,
for the appellant.

Mr. S.K.Garg Narwana, Sr. Advocate, with
Mr. Vishal Garg Narwana, Advocate
Mr. Nitin Sachdeva, Advocate
Mr. Japjit Singh Johal, Advocate
Mr. Mukul Ahuja, Advocate
Mr. Ranjit Sheokand, Advocate
for the respondents.

ANIL KSHETARPAL, J.

1. The correctness of the concurrent findings of fact arrived at by the courts below is challenged by the plaintiffs in this second appeal. Their suit filed for grant of decree of declaration with a consequential relief of permanent injunction with respect to 205 kanals and 6 marlas land has been dismissed. They claim to have purchased half share of the property from defendant no.1 and 2 in the year 1965. It is further stated that the remaining half share belongs to Sh. Dhan Singh, who had left the village and they being the near relatives are entitled to the property. In the alternative they

have also pleaded for the ownership of property by the prescription of time (adverse possession). It is also claimed that defendant no.1 and 2 are in fact are imposters as whereabouts of Sh. Dhan Singh are not known.

2. The defendants no.1 and 2 while contesting the suit denied execution of any sale deed in favour of the plaintiffs and they claimed to be owner in possession of the property even with respect to the share of Sh. Dhan Singh who is stated to be missing for the last 18-19 years. As noticed, both the courts below dismissed the suit.

3. Before the first appellate court, an application under Order XLI Rule 27 CPC was filed by the plaintiffs to produce sale deed dated 02.09.1985, allegedly executed by defendant no.1 and 2, ration card of Sh. Manphool son of Sh. Balbir and voter list of Sh. Manphool etc. It may be noticed here that this court has carefully examined the record of the first appellate court and along with the application filed under Order XLI Rule 27 CPC only a copy of the sale deed dated 02.09.1985 has been produced.

4. The first appellate court noticed that the plaintiffs have taken three different stands while filing the suit. The first assertion of the plaintiffs is to the effect that Smt. Mado widow of Sh. Parmatma and Sh. Harphool @ Manphool son of Sh. Parmatma sold their share to the plaintiffs vide sale deed dated 19.05.1965. With respect to the remaining share they claim to be in possession being the nearest relatives of Sh. Dhan Singh. Thereafter, it has been stated that they have become owner by way of adverse possession with respect to the share of Sh. Dhan Singh. It is also contended by the plaintiffs that defendants no.1 and 2 are imposters. In other words, they are not related to the family of Sh. Parmatma and Sh. Dhan Singh.

5. The application for permission to lead additional evidence has been dismissed by the first appellate court after noticing that the plaintiffs have been taking different stands and the additional evidence sought to be produced was in the knowledge of the plaintiffs.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

7. An application under Order XLI Rule 27 CPC has also been filed in this court in order to produce the three documents which were sought to be produced in the first appellate court as well as two additional documents, namely, an application filed by respondent no.1 in the court of Assistant Collector Ist Grade, Narwana, dated 08.08.1989 for partition of the land in dispute and certified copy of the order dated 09.05.1988 passed by the Sub Divisional Magistrate in proceeding under Section 145 Cr.P.C.

8. It may be noticed here that the sale deed dated 02.09.1985, was executed during the pendency of the suit. The suit was instituted on 08.08.1984, whereas the sale deed was executed in September, 1985. Through this additional evidence the plaintiffs want to prove that defendants no.1 and 2 are residents of village Nidhana and are imposters. It may be noted here that the oral evidence led by the plaintiffs is contradictory to their pleadings and unreliable. In the plaint, it is the case of the plaintiffs that Sh. Parmatma son of Sh. Parsa died in the year 1961 while leaving behind Smt. Mado and minor son Sh. Harphool. Whereas, the plaintiffs's witnesses PW3-Musadi and PW5-Jeeta have stated that Sh. Parmatma son of Sh. Parsa was never married. It is claimed by the plaintiffs that Sh. Parmatma died in the year 1961 and thereafter the whereabouts of Smt. Mado are not known.

However, it is evident that on 21.11.1986, mutation no.38646 (Ex.D1) has

been entered in favour of Sh. Harphool @ Manphool son of Sh. Parmatma and mutation 2502 (Ex.D12), dated 16.07.1986 in favour of Sh. Harphool @ Manphool son of Sh. Parmatma was sanctioned. Moreover, the plaintiffs's witnesses have stated that defendant no.1 Sh. Harphool @ Manphool is in fact son of Sh. Balbir. However, no evidence has been led to prove the said fact. Sh. Dhoom Singh while appearing in evidence has stated that Sh. Harphool @ Manphool was 25-26 years of age in the year 1986. Moreover, the defendants have even denied the execution of the sale deed allegedly put forth by the plaintiffs.

9. In these circumstances the application for additional evidence does not have substance because the documents sought to be produced are with respect to the period post the date of filing of the suit. No evidence has been produced by the plaintiffs to prove their stand that defendants no.1 and 2 are from the family of Sh. Balbir son of Sh. Sheo Karan who are residents of village Nidhana. Moreover, the plaintiffs have not made attempt to prove the sale deed allegedly executed on 19.05.1965. Neither the marginal witnesses were examined nor other reliable evidence has been produced. No effort has been made to prove that the aforesaid sale deed was executed by Smt. Mado widow of Sh. Parmatma.

10. The learned senior counsel representing the appellant has submitted that the defendants are required to prove their relationship with Sh. Dhan Singh.

11. This court has considered the submission of the learned counsel representing the parties. In fact, in this case, the plaintiffs are not disputing that Sh. Harphool @ Manphool son of Sh. Parmatma and Smt. Mado widow of Sh. Parmatma are the nearest heirs of Sh. Dhan Singh. It is their case that

defendants no.1 and 2 are imposters and as they belong to the family of Sh. Balbir son of Sh. Sheo Karan, resident of village Nidhana, Tehsil Meham, District Rohtak, the onus lies on the plaintiffs to prove the same. However, as noticed above they have failed to prove the same. Moreover, Sh. Harphool as well as Smt. Mado have deposed in the court and the learned counsel representing the plaintiff failed to impeach their credibility despite sufficient opportunity to cross-examine them. DW3-Sh. Khushi Ram, who is the real brother of Smt. Mado, has also been examined to prove their relationship. The defendants have also examined DW4 Sh. Ram Sarup to prove their relationship. The defendants have also examined DW5-Sh. Hazari, Lambardar and DW6-Sh. Jeeta to prove that they are related to Sh. Parmatma who was a nephew of Sh. Dhan Singh. In such circumstances, the burden of proof lies on the plaintiffs to prove their case, however, they miserably failed to prove their case.

11. Consequently, finding no merit, the appeal as well as the application for leading the additional evidence is dismissed.

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

23rd August, 2023
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO