

RSA-1995 of 2016 (O&M)

2023:PHHC:150200

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

RSA-1995 of 2016 (O&M)
Date of decision: 22.11.2023

Inder Kumar

.....Appellant

Versus

Gurdeep Kaur

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. P.S. Jammu, Advocate,
for the appellant.

NAMIT KUMAR, J.**CM-5288-C of 2016**

1. This application has been filed by the applicant-appellant under Section 151 CPC for condonation of delay of 292 days in refilling the appeal.

2. In view of the averments made in the application, which is duly supported by an affidavit, same is allowed. Delay of 292 days in refilling the appeal is condoned.

CM-5289-C of 2016

1. This application has been filed by the applicant-appellant for exemption from filing certified copies of impugned judgment and decree dated 12.08.2013 passed by the Court of learned Civil Judge (Junior Division), Yamuna Nagar at Jagadhri; grounds of appeal as well as true typed copies of impugned judgment and decree dated

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12.08.2013; grounds of appeal as well as judgment and decree dated 23.12.2014 passed by the Court of learned Additional District Judge, Yamuna Nagar at Jagadhri.

2. Allowed as prayed for subject to all just exceptions.

RSA-1995 of 2016

1. This Regular Second Appeal is directed against the judgment and decree dated 12.08.2013 passed by the Court of learned Civil Judge (Junior Division), Yamuna Nagar at Jagadhri, whereby suit of the appellant-plaintiff for declaration was dismissed as well as against the judgment and decree dated 23.12.2014 passed by the Court of learned Additional District Judge, Yamuna Nagar at Jagadhri, vide which the appeal filed by the appellant-plaintiff against the judgment and decree of the trial Court, has also been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Briefly stated, plaintiff filed a suit for declaration pleading therein that he alongwith his brothers namely Maherider Pal, Som Dutt, Vinod and Pawan Kumar was owner in possession in equal shares in respect of 25/27 share and similarly Santosh Kumar their mother was also having 2/27 share in respect of land compromised in Khewat No.196/190. The share of the mother of the plaintiff namely Smt Santosh Kumari came to one acre (2/27 share) out of the aforesaid joint land. She had sold her share out of Khasra no.45//22/2, 45//22/1 vide registered sale deed in favour of the defendant and so she was left with no share in the remaining joint land.

The remaining land was left with the plaintiff and his brothers as

owners in possession. It has been further submitted that mother of the plaintiff died and the plaintiff and his brothers continued to be in possession of the remaining land except for one acre already sold by their mother to the defendant. It has been alleged that thereafter defendant started claiming ownership over the suit land and started threatening to dispossess the plaintiff and his brothers. The plaintiff asked the defendant not to do so, whereupon she disclosed that Smt. Santosh Kumari had executed the impugned sale deed in their favour regarding the suit land. It has been further averred that the impugned sale deed no.2046 dated 20.2.2007 allegedly executed by Smt. Santosh Kumari, mother of plaintiff in respect of the suit land as well as subsequent mutation no.2045 are wrong, illegal, null and void, ineffective and not binding on the rights of the plaintiff and is liable to be set aside on the ground that Smt. Santosh Devi had already sold her share out of the khasra number 45//22/2 and 45//22/1 in favour of defendant vide previous sale deed and so she was not left with any share in the joint land and had no right to execute the impugned sale deed dated 20.2.2007 nor she was competent to do so and the possession of the suit land was never transferred to the defendant and the suit land continued to be in possession of the plaintiff and his brothers and it is still in their possession. It has been further averred that plaintiff approached the defendant and requested her to treat the impugned sale deed as wrong, null, void, ineffective and against the factual position but the defendant refused to do so and threatened the plaintiff to alienate the suit land taking the advantage of the wrong and

illegal impugned sale deed and also threatened to dispossess the plaintiff forcibly and illegally from the suit land, for which she has no right to do so.

3. Upon notice, defendant appeared and filed written statement taking preliminary objections with regard to non-maintainability of suit; deficiency of court fee; estoppels; non-joinder of necessary parties etc. On merits, it has been admitted that plaintiff, his brothers and Santosh Kumari (mother of plaintiff) were joint owners of the land measuring 108 Kanals, compromised in Khewat No.190 and thereafter some mistake occurred in the revenue record and the entries in subsequent Jamabandi were wrongly prepared and when this fact came to the notice of the Revenue Officer then mistake was corrected by Fard Badar no.3 dt.5.2.2010 and the entries in the jamabandi for the year 2005-06 complied with Fard Badar no.3, share of Santosh Kumari widow of Baseshar Nath was rightly recorded. It has been further averred that defendant is in possession of the suit land and besides this the defendant is in possession of the land measuring 08 Kanals comprised in khasra no.45//22/2(4-0); 45//22/1 (4-0) out of the total khewat having an area measuring 108 Kanals and this possession of the defendant is in accordance with her entitlement There is no question of any threat to the plaintiff with regard to dispossession as the suit property bearing Khasra no 45//19 is in possession of the defendant. It has been further averred that sale deed no.2046 dated 20,2,2007 is a legal document and Santosh Kumari was competent to execute the same and mutation no.2045 has been rightly sanctioned on

the basis of this sale deed. Santosh Kumari has sold land measuring 08 Kanals comprised in khosra nos. 45//22/2 and 22/1 and she remained co-sharer even after execution of the sale deed with regard to these khasra numbers and that the plaintiff filed suit on the basis of that record wherein mistake had occurred.

4. From the pleadings of both the parties following issues were framed by Court of first instance vide order dated 24.1.2011: -

- “1. Whether the sale deed dated 20.2.2007 executed by Smt. Santosh Kumari in favour of the defendant is illegal, null and void and not binding upon the rights of the plaintiff? OPP
2. Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP
3. Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for? OPP
4. Whether the suit is not maintainable? OPD
5. Relief”

5. Parties led oral as well as documentary evidence in support of their respective contentions.

6. After hearing arguments and after appreciating evidence on record, trial Court dismissed the suit of plaintiff vide judgment and decree dated 12.08.2013.

7. Aggrieved against the judgment and decree of the trial Court, plaintiff preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 23.12.2014.

8. Learned counsel for the appellant contended that appellant-plaintiff has very well proved his case by oral as well as documentary evidence but both the Courts below wrongly dismissed

the suit of the appellant-plaintiff. He further contended that the Courts below failed to appreciate that sale deed No.2046 dated 20.02.2007 as well as subsequent mutation No.2045 in favour of respondent-defendant was wrong and illegal as Smt. Santosh Kumari mother of the appellant-plaintiff was having no land in her name as she had already transferred her entire share.

9. I have heard learned counsel for the appellant and perused the record.

10. Appellant-plaintiff filed a suit seeking decree of declaration that sale deed No.2046 dated 20.02.2007 executed by Smt. Santosh Kumari, mother of the appellant, in respect of land measuring 8 kanals comprised in khewat No.190 min khatauni No.319 khasra No.45//19 situated in village Mauza Ghillaur, hadbast No.159 Sub Tehsil Radaur, District Yamuna Nagar and subsequent mutation No.2045 on the basis of said sale deed are wrong, illegal, null, void, ineffective and not binding on the rights of the appellant-plaintiff and are liable to be set aside. Appellant stepped into witness box as PW-1 and stated that he along with his other brothers is owner in possession of the suit land. However during cross examination he deposed that he has never seen his girdawari and does not know in whose name the girdawari is going on and that he does not know whether his mother's name was entered in the patawri's documentary records or not. As per jamabandi for the year 1975-76 exhibited as Ex D2 Basheshar Nath, father of the plaintiff, and his mother Smt Santosh Kumari were owner in possession of half share each in respect of khewat no.87. As such

they were entitled of 54 Kanals each out of total land comprised in the said khewat i.e. total land measuring 108 Kanals. Further perusal of Ex. D3 i.e. mutation no 1233 entered after the death of above mentioned Shri Basheshar Nath, plaintiff alongwith his other five brothers got the share of Basheshar Nath in inheritance. Thus, 1/6th of 54 Kanals equivalent to 9 Kanals each were got inherited by the plaintiff and his other five brothers i.e. Mahinder Pal, Som Dult, Ravinder Kumar, Vinod Kumar and Pawan Kumar on the basis of an oral will. One of the brothers of the plaintiff, namely, Ravinder Kumar died unmarried and issueless. Thus, his share was sanctioned in favour of Smt. Santosh Kumari, which is proved by Ex D4 containing mutation no.1429. Hence 9 Kanals were added to earlier possessed 54 Kanals. Thus, the total share of Smt Santosh Kumari came to 63 Kanals out of total land measuring 108 Kanals. This fact is proved by the Jamabandi for the year 1995-1996 Ex.D5 wherein in Khewat no. 184 plaintiff alongwith his other brothers are owner in possession of 5/12 share and Santosh Kumari is in owner in possession of 7/12 share. Smt. Santosh KUMari executed a relinquishment deed in favour of her sons on 13.06.2000 in respect of which mutation Ex.D6 was sanctioned. Out of the remaining share, land measuring 4 kanals was sold by Smt. Santosh Kumar to one Dalip Singh son of Saudagar Singh as reflected in mutation Ex.D12. Thus Smt Santosh Kumari was remained owner to the extent of 24 Kanals. Respondent-defendant proved on record Fard Badar No.3 dated 05.02.2010 as Ex.D9 showing that some mistake occurred in the jamabandi for the year 2000-01 and in the jamabandi for the year 2005-

06 and the same was ordered to be corrected. Thus, it is clearly proved on record the sale deed in question and mutation with respect to the land measuring 8 kanals comprised in khewat No.190 kasra No.45//19 was within the share of Smt. Santosh Kumari and on the basis of said sale deed respondent-defendant had become co-sharer in the joint land.

11. Concurrent findings have been recorded by both the Courts below that Smt. Santosh Kumari, mother of the appellant-plaintiff, was having more than 8 kanals of land as co-owner when the impugned sale deed was executed by her in favour of the respondent-defendant and learned counsel for the appellant has failed to show that the same are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

12. No question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

13. In view of the above, present appeal is dismissed.

14. Pending application(s), if any, stand disposed of accordingly.

22.11.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No