

RSA-590-2019 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

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Date of decision: 26.04.2024.

Satnam Kaur

...Appellant.

Versus

Naresh Kumar and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Sanjeev Kumar Arora, Advocate
for the appellant.

Sukhvinder Kaur, J.

The instant Regular Second Appeal has been filed by appellant/
plaintiff against the concurrent findings recorded by both the Courts below
vide which the suit of the plaintiff was dismissed.

2. Brief facts of the case as per plaint are that the father of the
plaintiff Satnam Kaur namely Teja Singh alongwith his two brothers Kartar
Singh and Kirpal Singh sold their land situated in Village Kalheri, District
Karnal measuring 28 Kanal 11 Marlas comprising in Rect. No.6 as detailed
in para No.1 of the plaint on 07.07.1966 so Sain Ditta Mal and Prabh Dyal
i.e. predecessor in interest of defendants, as per jamabandi for the year
1962-63. It was alleged that the said land was sold jointly by Teja Singh
father of the plaintiff alongwith his two brothers Kartar Singh and Kirpal

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Singh as they were co-sharers in the above said land. The plaintiff filed a civil suit for possession against the above said persons by depositing amount of 1/5th of the sale consideration in the Court and contested the suit by pleading that the plaintiff is daughter of Teja Singh and niece of Kartar Singh and Kirpal Singh (defendants No.3 to 5 in that suit) and they have not informed the plaintiff before sale of the suit property and before execution of the sale deed dated 07.07.1966. The said suit for possession was decreed by learned SJIC, Panipat on 20.11.1968 to the effect that the plaintiff is entitled only qua share of her father subject to payment of Rs.2289.17 to be deposited by the plaintiff on or before 24.12.1968. It has been alleged that the amount of Rs.1280/- was deposited by the plaintiff at the time of filing of the suit and remaining amount was to be deposited within the stipulated period. It has been alleged that the said amount was deposited by the plaintiff in time and after that the name of the plaintiff was incorporated by the revenue officials inadvertently, in column No.5 of the jamabandi, though possession of the suit property was handed over to the plaintiff as per judgment and decree dated 20.11.1968 and since then the plaintiff is owner in possession over the Khasra No.25/1(4/0), 24(2/13), 16(2/17) total land measuring 9 Kanal 10 Marlas in Khewat No.68 shown in jamabandi for the year 2006-07. It has been alleged that in July, 2011, the plaintiff came to know that her name had not been mentioned in the column of ownership, regarding the land detailed in para No.5 of the plaint and then the plaintiff requested defendant No.11 to correct the revenue record and to incorporate her name in the jamabandi. But the defendant continued to prolong the

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mater on one pretext or the other and now defendants No.1 to 10 are threatening the plaintiff to dispossess her from the suit property. Hence, the instant suit was filed.

3. Notice to the said suit was given to the defendants. Defendant No.11 came present and filed written statement taking preliminary objections of maintainability, cause of action, locus standi, non service of notice under Section 80 CPC before filing of the present suit and suit being time barred. It was alleged that decree of Civil Court can be executed within 12 years from the date of judgment and decree and the decree dated 20.11.1968 was a conditional decree, subject to depositing the balance sale consideration on or before 24.12.1968. But the plaintiff has failed to produce any document with respect to depositing of remaining payment of sale consideration and the plaintiff has never got executed the said judgment and decree through a competent Court of law within the stipulated period, so she cannot claim the ownership on the basis of said decree. The remaining defendants i.e. defendants No.1 to 10 did not contest the suit of the plaintiff.

4. The suit of plaintiff was dismissed by the trial Court, vide judgment and decree dated 11.12.2014. The appeal preferred by the appellant/ plaintiff before the First Appellate Court was also dismissed, vide judgment and decree dated 25.07.2018. Hence, the present Regular Second Appeal has been filed by the appellant/ plaintiff, before this Court.

5. Learned counsel for the appellant/ plaintiff has contended that the findings recorded by both the Courts below are erroneous and not

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sustainable in the eyes of law. It has been proved by the appellant by placing on record copy of judgment and decree dated 20.11.1968 Ex.P4 and P5 respectively, that suit filed by the plaintiff was decreed by SJIC, Panipat and she was held entitled to share of her father subject to payment of Rs.2289.17. It has been further proved by the appellant that the amount of Rs.1280/- was deposited by her at the time of filing of the suit and the remaining amount was deposited within the stipulated period as per judgment and decree dated 20.11.1968. The possession qua the share of her father i.e. property in dispute was handed over to her but the revenue authorities illegally and wrongly reflected the name of the plaintiff in the column of possession, in collusion with the present defendants/ respondents. As the plaintiff came to know about the wrong entries in the year 2011, so the present suit was filed well within the limitation in the year 2011.

6. I have heard learned counsel for the appellant and have gone through the record thoroughly.

7. As per the judgment and decree dated 20.11.1968 Ex.P4 and P5, the suit filed by the plaintiff for declaration of preferential rights of Satnam Kaur being daughter of Teja Singh and niece of Kartar Singh and Kirpal Singh was partly decreed only qua 1/3rd share of Teja Singh i.e. father of the plaintiff in that property, subject to depositing the payment of Rs.2289.17 as preemption money to the defendant and the plaintiff was directed to deposit the said money on or before 24.12.1968, failing which it was stated that the suit of the plaintiff would be deemed to be dismissed. The plaintiff has admitted in her cross-examination that amount of Rs.1280/- was deposited by her at the time of filing of the suit in the year

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2012. Thus obviously, she did not comply with the judgment and decree dated 20.11.1968 as per which the preemption money was to be deposited upto 24.12.1968. As this specific condition was not complied with, so the name of the plaintiff/appellant was not incorporated in the revenue record.

8. It has been rightly observed by the Courts below that merely having decree in her favour does not mean that the plaintiff/ appellant became owner of the suit property unless conditions specific in the decree were fulfilled. The plaintiff was to deposit preemption money within the stipulated period as per judgment and decree dated 20.11.1968 and the suit, if any, was to be filed within a period of limitation. So delay in filing the appeal after about 43 years of the decree has not been explained by the plaintiff.

9. For the reasons recorded above, the present Regular Second Appeal fails and is dismissed as it does not raise any question of law much less substantial question of law.

10. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

26.04.2024.
komal

Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No