

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**109****RSA No.1257 of 2021****Reserved on : 26.04.2024****Date of Decision : 29.04.2024**

Leelu Ram

....Appellant

VERSUS

Suraj Bhan and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Kulwant Singh Dhanora, Advocate for the appellant.

ALKA SARIN, J.

1. The present appeal has been preferred by the plaintiff No.1-appellant challenging the judgment and decree dated 04.11.2015 passed by the Trial Court and the judgment and decree dated 13.02.2020 passed by the First Appellate Court.

2. The brief facts relevant to the present case are that the plaintiff No.1-appellant alongwith proforma respondent Nos.3 to 5 herein filed a suit for declaration to the effect that they alongwith their sisters (proforma respondent Nos.6 to 8 herein) were owners in possession of the land measuring 32 kanals being 640/1147 share out of the total land measuring 57 kanals 07 marlas comprised in Khewat No.469 Khatauni Nos.663-664 as per Jamabandi for the year 2005-06 situated in village Shahpur, Tehsil and District Hisar. It was averred in the suit that the father of plaintiff No.1-appellant and proforma respondent Nos.3 to 8 herein, namely, Harphul and father of defendant-respondent Nos.1 and 2, namely, Mani Ram, were real

brothers and both have since expired. It was further the case set up that Mani Ram and Harphul had purchased the land measuring 57 kanals 07 marlas out of which 32 kanals was purchased by Harphul and 25 kanals 07 marlas was purchased by Mani Ram and they were owners in possession of their respective shares. After the death of Harphul the plaintiff No.1-appellant and proforma respondent Nos.3 to 8 herein were owners in possession of their share i.e. 32 kanals of land and were also paying *nehri abhiyana* of land measuring 32 kanals. It was further averred that Mani Ram, father of the defendant-respondent Nos.1 and 2, by playing fraud had got registered sale deed bearing No.3057 dated 30.09.1957 to the extent of equal share and had also got entered the same in the mutation. It was further the case that the plaintiff No.1-appellant and proforma respondent Nos.3 to 8 herein came to know about the wrong recital in the sale deed and in the revenue record on receipt of notice of partition proceedings and hence the present suit. On notice the defendant-respondent Nos.1 and 2 appeared and filed their written statement raising preliminary objections of *locus standi*, cause of action and limitation. On merits it was averred that Harphul and Mani Ram had purchased 57 kanals 07 marlas of land in equal shares from their vendor Madan Lal vide sale deed No.3057 dated 30.09.1957 and accordingly mutation No.944 dated 26.08.1958 was sanctioned in favour of Harphul and Mani Ram and after their death the plaintiff No.1-appellant and proforma respondent Nos.3 to 8 herein were owners to the extent of half share and the defendant-respondent Nos.1 and 2 were owners to the extent of half share of the land measuring 57 kanals 07 marlas.

3. On the basis of pleadings of the parties the following issues were framed by the Trial Court :

1. Whether the plaintiff and proforma defendants no.3 to 5, are owner in possession of the suit land as mentioned in the head note of the plaint ? OPP
2. Whether the impugned mutation entered in jamabandi on the basis of sale deed No.3057 dated 30.09.1957 in favour of the defendants no.1 and 2, is not binding on the rights of plaintiff and proforma defendants ? OPP
3. Whether the defendants are liable to be restrained from possessing, interfering, selling and transferring the peaceful possession of plaintiff in any manner, as alleged ? OPP
4. Whether the plaintiff has no locus standi and cause of action to file the present suit ? OPD
5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPD
6. Whether the suit of the plaintiff is time barred ? OPD
7. Relief.

4. The Trial Court dismissed the suit vide judgment and decree dated 04.11.2015. Aggrieved by the same an appeal was preferred only by the plaintiff No.1-appellant which appeal was also dismissed vide judgment and decree dated 13.02.2020. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff No.1-appellant would contend that both the Courts have erred in dismissing his suit which infact ought to have been decreed. It is submitted that Harphul had purchased 32 kanals of

land and Mani Ram by playing a fraud had got registered the sale deed bearing No.3057 dated 30.09.1957 to the extent of equal shares and also got entered the mutation that both Harphul and Mani Ram were owners to the extent of half share each. It is further the contention that the plaintiff No.1-appellant and proforma respondent Nos.3 to 8 have been in possession of their share of the property i.e. 32 kanals and have also been paying *nehri abhiyana*.

6. Heard.

7. Both the Trial Court and the First Appellate Court found that the suit land was purchased by the predecessor-in-interest of the plaintiff No.1-appellant and the predecessor-in-interest of the defendant-respondent Nos.1 and 2 to the extent of equal shares vide the sale deed which was produced on the record as Ex.D1. Accordingly, mutation was also entered on the basis of the said sale deed dated 30.09.1957. The argument of learned counsel for the plaintiff No.1-appellant that 32 kanals of land was purchased by Harphul is belied by the sale deed itself which was executed on 30.09.1957. The said sale deed was executed by Harphul on his own behalf and on behalf of Mani Ram. During his life-time the said sale deed was never challenged by him. There is not an iota of evidence on the record to even remotely suggest that there was any other arrangement barring as mentioned in the sale deed dated 30.09.1957. Learned counsel for the plaintiff No.1-appellant has not been able to convince this Court that Harphul had purchased 32 kanals of land and that Mani Ram had only purchased 25 kanals 07 marlas of land since the same is totally contrary to the contents of the sale deed (Ex.D1). In the absence of any evidence, both

the Courts have rightly non-suited the plaintiff No.1-appellant. No other point was argued.

8. In view of the above, no question of law much less any substantial question of law, arises for determination in the present case. The present appeal being devoid of any merits is accordingly dismissed. Pending applications, if any, also stand disposed off.

29.04.2024
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO