

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-3902-2019 (O&M)
Reserved on : 16.02.2024
Date of Decision : 20.02.2024

Manjit Kaur
.....Appellant

VERSUS

Kashmir Singh and Anr.
.....Respondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Arora, Advocate for the appellant.

ALKA SARIN, J.
CM-10510-C-2019

This is an application for condonation of delay of 14 days in
filing the appeal.

For the reasons stated in the application, delay of 14 days in
filing the appeal is condoned. CM stands disposed off.

RSA-3902-2019

1. The present appeal has been preferred by the plaintiff-appellant
challenging the judgment and decree dated 26.11.2018 passed by the First
Appellate Court reversing the judgment and decree dated 02.09.2014 passed
by the Trial Court. The Trial Court had decreed the suit for declaration and
permanent injunction filed by the plaintiff-appellant. The appeal by the

defendant-respondent Kashmir Singh was partly accepted by the First Appellate Court and the judgement and decree of the Trial Court were modified.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit seeking a declaration that she was the owner in possession of the suit land fully described in the plaint and for permanent injunction restraining defendant No.2 (defendant-respondent No.1 herein) from dispossessing her from the suit land. It was averred in the plaint that defendant No.1 (defendant-respondent No.2 herein) had already sold the land more than his share from the total *khata* to different persons and that he had no share left in the joint *khata*. It was further alleged that the sale deeds dated 11.03.2011 and 14.03.2011 executed in favour of Kashmir Singh (defendant-respondent No.1 herein) by Jagir Singh (defendant-respondent No.2 herein) were null and void as Jagir Singh (defendant-respondent No.2 herein) had no share left in the joint *khata* and hence he was not competent to sell the land. It may be noticed here that the suit was only for a declaration to the effect that the plaintiff-appellant was the owner in peaceful possession of the suit land measuring 144 kanals 5 marlas and further for permanent injunction. There was no prayer for setting aside the sale deeds in favour of defendant-respondent No.1 herein.

3. The defendant-respondents contested the suit and filed a joint written statement contending that the sale deed dated 17.01.1996 in favour of the plaintiff-appellant was qua land measuring 96 kanals, however, revenue entries qua land measuring 144 kanals 10 marlas were wrongly made. It was further averred that defendant-respondent No.2 herein never

executed the sale deed dated 13.12.1995 alleged to have been registered on 17.01.1996 in favour of the plaintiff-appellant. It was also contended that the defendant-respondent No.1 had validly purchased land measuring 8 kanal 18 marlas vide sale deeds dated 14.03.2011 from defendant-respondent No.2 herein. Replication was filed. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is owner in possession of land in question and is entitled to relief of declaration as prayed for ? OPP
2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP
3. Whether the plaintiff has suppressed material facts from this court and is not entitled to any relief as prayed for ? OPD
4. Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of necessary parties as all the co-sharers and transferees are not impleaded as party to the present suit ? OPD
5. Whether the plaintiff of the present suit is liable to be rejected u/o 7 Rule 11 CPC as the relief claimed in the present suit is under value ? OPD
6. Relief.

4. The Trial Court vide judgment and decree dated 02.09.2014 decreed the suit holding the plaintiff-appellant to being owner in possession of land measuring 144 kanals 5 marlas and land measuring 0 kanal 5 marlas

as fully detailed in the head-note of the plaint and defendant-respondent No.1 herein was restrained from forcibly and illegally dispossessing the plaintiff-appellant. Aggrieved by the same, defendant-respondent No.1 herein preferred an appeal before the First Appellate Court which was partly allowed vide judgment and decree dated 26.11.2018. The First Appellate Court held that the plaintiff-appellant was owner in possession of the suit land to the extent of 96 kanals and that she had no right to challenge the sale deeds executed by the defendant-respondent No.2 herein in favour of defendant-respondent No.1 herein. Hence, the present regular second appeal by the plaintiff-appellant.

5. Learned counsel for the plaintiff-appellant would contend that the plaintiff-appellant was the owner in possession of the suit land measuring 144 kanals 5 marlas having been sold to her by defendant-respondent No.2 herein and that there was no right, title or interest left in favour of defendant-respondent No.2 and hence the sale deeds executed by him in favour of defendant-respondent No.1 (Kashmir Singh) were illegal, null and void. According to counsel, the First Appellate Court erred in decreeing the suit qua land measuring 96 kanals only.

6. I have heard the learned counsel for the plaintiff-appellant.

7. In the present case the Trial Court had decreed the suit of the plaintiff-appellant only on the basis of a jamabandi for the year 2008-09 (Ex.P1) and *Fard Haqiat* of 2008-09 showing her to being in joint possession. The First Appellate Court held that the sale deed on which the entire case of the plaintiff-appellant was based was not proved on the record. A photocopy of the sale deed dated 13.12.1995 was placed on the record by

the defendant-respondents, which was marked as Mark DB, and therefore it was held that the plaintiff-appellant had miserably failed to prove that she had acquired 2880/6471 share in the joint *khata* of land measuring 328 kanals 4 marlas. It was further held that the plaintiff-appellant had failed to prove herself as owner of 144 kanals 5 marlas and hence had no right to challenge the sale deeds executed by defendant-respondent No.2 in favour of defendant-respondent No.1. Accordingly, the appeal was partly allowed by modifying the judgment and decree passed by the Trial Court to the effect that the plaintiff-appellant was joint owner in possession of the suit land to the extent of 96 kanals and she had no right to challenge the sale deeds (Ex.D1 and Ex.D2) executed by defendant-respondent No.2 in favour of defendant-respondent No.1. The learned counsel for the plaintiff-appellant has not been able to show a single document on the record to prove that the plaintiff-appellant was the owner of the entire suit land measuring 144 kanals 5 marlas. Further, in the plaint there is no challenge to the sale deeds (Ex.D1 and Ex.D2) executed by the defendant-respondent No.2 in favour of defendant-respondent No.1. The suit was simpliciter for declaration that the plaintiff-appellant is owner in possession of land measuring 144 kanals 5 marlas and further for restraining defendant-respondent No.1 herein from interfering in her possession and forcibly dispossessing her. No other point has been argued.

8. In view of the above, I do not find any illegality or infirmity in the judgment and decree dated 26.11.2018 passed by the First Appellate Court. No question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal,

being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

20.02.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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