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

RSA-3041-2019 (O&M)

Reserved on : 07.11.2024

Pronounced on : 19.11.2024

Balwinder Singh

....Appellant

VERSUS

Satnam Singh & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. G. S. Jagpal, Advocate for the appellant.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the defendant No.1-appellant challenging the judgments and decrees dated 11.05.2017 and 10.04.2019 passed by the Trial Court and the First Appellate Court, respectively.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 filed the present suit for declaration that he is co-sharer (joint owner in possession) to the extent of 10K-15M and defendants are co-sharers (joint owner in possession) to the extent of 15K-14M in land measuring 26K-9M situated at Village Bahadurke, Tehsil Jagraon, District Ludhiana with a consequential relief of partition and separate possession and for mense profits for use and occupation of land measuring 10K-15M or in the alternative suit for joint possession of land measuring 10K-15M on the basis of joint ownership of the plaintiff-respondent No.1. It was pleaded that one Fauja Singh son of Gopal Singh was the father of defendants No.1 and 2 and husband of defendant No.3 and the said Fauja Singh was the son of

sister of the mother of the plaintiff-respondent No.1 and remained sarpanch of the village. The plaintiff-respondent No.1 is a poor person and Fauja Singh was an influential person and was in position to exercise undue influence on the plaintiff-respondent No.1. On 05.11.1965 the plaintiff-respondent No.1 sold to Fauja Singh land measuring 16K-0M out of 26K-19M vide a registered sale deed for a consideration of Rs. 400/- and thus Fauja Singh became co-sharer in the land to the extent of 16K-0M and plaintiff-respondent No.1 became co-sharer to the extent of 10K-19M. Fauja Singh got sanctioned mutation No.180 on 29.12.1966 of land measuring 16K-0M as per the sale deed dated 05.11.1965 in his favour but this mutation was not reflected and incorporated in the Jamabandi for the year 1972-73. In November 2010 the plaintiff-respondent No.1 came to know that on 12.05.1980 Fauja Singh had again got sanctioned a mutation No.223 in his favour on the basis of sale deed dated 05.11.1965 but this mutation was for land measuring 26K-18M instead of 16K-0M sold in his favour and the said mutation No.223 was null and void ab-initio qua land to the extent of 10K-18M of the plaintiff-respondent No.1 and did not confer any right on Fauja Singh or the defendants. Fauja Singh had committed an offence of forgery by getting the mutation sanctioned in excess of the land sold to him. As per the plaintiff-respondent No.1 the defendants have illegally and forcibly cultivated the share of the plaintiff-respondent No.1 and have not furnished the accounts of income from the share of the plaintiff-respondent No.1 in suit land for the last 10 years prior to filing the present suit. Hence, the suit. The defendants contested the suit and filed written statement raising

preliminary objections of maintainability, limitation, cause of action, estoppel, valuation, concealment, etc. On merits it was averred that the plaintiff-respondent No.1 had executed and registered the sale deed on 05.11.1965 in favour of Fauja Singh not of land measuring 16K-0M but of his entire share i.e. 26K-19M for a consideration of Rs.400/- and Fauja Singh had become the owner in possession of land measuring 26K-19M and that the entire land measuring 26K-19M was mutated on the name of Fauja Singh. It was denied that forgery of any kind was committed by Fauja Singh and submitted that since 05.11.1965 Fauja Singh was the owner in possession of the entire land measuring 26K-19M and after his death the defendants had become the owners in possession by way of natural inheritance. The plaintiff-respondent No.1 filed a replication reiterating the contents of the plaint and denying the averments made in the written statement.

3. From the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to a decree of declaration as prayed for ? OPP
2. Whether the plaintiff is entitled to mesne profits for use and occupation of land measuring 10K-15M as prayed for ? OPP
3. Whether the plaintiff is entitled for a decree of joint possession of land measuring 10K-15M as prayed for?OPP
4. Whether the suit of the plaintiff is not maintainable? OPD
5. Whether the plaint is barred by law of limitation?OPD

6. Whether the plaintiff has no cause of action to file the present suit ? OPD

7. Whether the plaintiff is estopped by his acts and conduct to file the present suit ? OPD

8. Whether the suit of the plaintiff is not properly valued for the purposes of court fee and jurisdiction ? OPD

9. Whether the plaintiff has not come to the court with clean hands ? OPD

10. Relief.

4. Vide judgement and decree dated 11.05.2017 the Trial Court partly decreed the suit of the plaintiff-respondent No.1 granting him the reliefs of declaration and joint possession. The reliefs of separate possession, partition and mesne profits were declined. Aggrieved by the same an appeal was preferred by the defendants which appeal was dismissed by the First Appellate Court vide judgement and decree dated 10.04.2019. Hence, the present regular second appeal which has been preferred by defendant No.1 alone.

5. The learned counsel for the defendant No.1-appellant would contend that both the Courts have erred in decreeing the suit of the plaintiff-respondent No.1. It is urged that the plaintiff-respondent No.1 had knowingly sold the entire land measuring 26K-19M to Fauja Singh and therefore the Fauja Singh was correctly recorded as owner of the entire land.

6. Heard.

7. In the present case both the Courts have found that the plaintiff-respondent No.1 had executed the sale deed qua part of the suit land in favour of Fauja Singh. According to the plaintiff-respondent No.1 he had

sold only 16 Kanal 0 Marla to Fauja Singh whereas according to the defendants the entire land measuring 26 Kanal 19 Marla was sold to Fauja Singh. The Courts found that the evidence on the record proved that the plaintiff-respondent No.1 had actually executed the sale deed dated 05.11.1965 in favour of Fauja Singh for land measuring 16 Kanal 0 Marla. The evidence led by the defendant No.1-appellant does not inspire confidence in the face of the documentary evidence led by the plaintiff-respondent No.1. No cogent and reliable evidence has been shown to the Court by the learned counsel which would establish that the plaintiff-respondent No.1 had actually sold the entire land measuring 26 Kanal 19 Marla to Fauja Singh. This Court finds no reason to differ from the findings returned by both the Courts. No other point was argued.

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

19.11.2024

Yogesh Sharma

(ALKA SARIN)

JUDGE

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