



116

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

RSA-4607-2019 (O&M)

Date of Decision : 26.11.2024

Surender Singh

... Appellant(s)

Versus

Bijender Singh & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. M.S. Rana, Advocate with
Mr. Sahil Rathi, Advocate and
Mr. Sumit Chaudhary, Advocate for the appellant.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 11.12.2017 passed by the Trial Court and the judgment and decree dated 18.04.2019 passed by the First Appellate Court.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellant filed the present suit for declaration and permanent injunction averring in the plaint that the plaintiff-appellant was a co-owner in joint possession to the extent of 1/3rd share in agricultural land comprised in Khewat No.22, Khatoni No.23, Rect. No.39, Killa Nos.2/2(3-17), 9(7-13), 12(8-0), 19(8-0), 22/2(4-10), 23(7-13), total land measuring 39 Kanals and 13 marlas situated within the revenue estate of village Durgapur, Tehsil and District Palwal. It was further averred that the suit property was joint between the plaintiff-appellant and the defendant-respondent Nos.1 and 2 and the defendant-respondent Nos.1 and 2 in connivance with each other

sold the land mentioned above to the extent of 143/793rd share to the defendant-respondent No.3 through a registered sale deed bearing document No.3213 dated 02.12.2011 and delivered the possession to the defendant-respondent No.3. It was further the case that the defendant-respondent No.3 had got the mutation No.1161 sanctioned in their favour on 17.03.2012 and had further given the suit property on lease to the defendant-respondent No.4. Hence, the suit for declaring the sale deed dated 02.12.2011 as illegal and challenge was also laid to the mutation dated 17.03.2012. In the written statement filed by the defendant-respondent Nos.1 and 2, preliminary objections qua maintainability, locus standi, cause of action and the suit being collusive were raised. On merits, the averments in the plaint were denied and it was further stated that the defendant-respondent Nos.1 and 2 had sold only their shares and no loss had been caused to the plaintiff-appellant. The sale deed was a registered document and, hence, no cause of action arose in his favour. The defendant-respondent No.3 also raised various preliminary objections and on merits it was averred that the plaintiff-appellant and the defendant-respondent Nos.1 and 2 were joint owners but the defendant-respondent Nos.1 and 2 had rightly sold their shares to the extent of 7 Kanals 3 Marlas for a sale consideration of Rs.12,50,000/- and that possession was also given. The defendant-respondent No.4 also filed his separate written statement raising similar pleas.

3. On the basis of the pleadings, the following issues were framed:

1. Whether the plaintiff is entitled a decree for declaration as prayed for ? OPP

2. Whether the plaintiff is entitled a decree for permanent injunction restraining the defendants from dispossessing the plaintiff ? OPP
3. Whether the plaintiff is entitled for mandatory injunction as prayed for ? OPP
4. Whether the suit of plaintiff is not maintainable in the present form ? OPD
5. Whether the plaintiff has no locus standi and no action of action to file the present suit ? OPD
6. Whether the plaintiff is estopped by his own act, conduct and acquiescence to file the present suit ? OPD
7. Whether the plaintiff come with clean hands and suppressed true and material facts ? OPD
8. Relief.

4. The Trial Court vide judgment and decree dated 11.12.2017 dismissed the suit of the plaintiff-appellant holding that the plaintiff-appellant had failed to show that the document was a sham transaction. Aggrieved by the same, an appeal was preferred before the First Appellate Court which appeal was also dismissed vide judgment and decree dated 18.04.2019. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant would contend that the defendant-respondent Nos.1 and 2 being co-sharers could not have sold their share of the property as no partition had taken place.

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

7. In the present case, admittedly, the defendant-respondent Nos.1 and 2 have not sold beyond their shares. The argument of the learned counsel for the plaintiff-appellant that the sale deed could not have been executed in view of the fact that no partition had taken place deserves to be rejected. It is trite that a co-sharer is well within his right to sell his share of the property, even though the partition has not taken place. It is also a settled proposition of law that whatever sale of the unpartitioned land is made, it is always subject to partition.

8. In view of the above, I do not find any merit in the present regular second appeal. 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.

26.11.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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