



RSA No. 2723 of 2018 (O&M) 1

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

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**RSA No. 2723 of 2018 (O&M)
DATE OF DECISION :- 20.08.2025**

Suraj Bhan

...Appellant

Versus

Satbir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Yesh Paul Malik, Advocate for the appellant.

VIRINDER AGGARWAL, J. (Oral)

1. This appeal has been preferred against the concurrent judgments and decrees passed by the Courts below. The appellant-plaintiff filed a suit for declaration claiming himself to be owner in possession of 19/360 share in the suit land and challenged the sale deed No. 79 of 02.05.2005 executed by his father Ram Dhari in favour of defendants No. 5 and 6 and consequent mutation and seeks permanent injunction restraining defendants from interfering into his possession on the grounds that previously he instituted a suit for permanent injunction against his father Ram Dhari which was decided on 21.02.2009. During the pendency of that suit an ex-parte injunction was granted on 02.12.2004 restraining Ram Dhari from alienating the suit land. In spite of knowledge of injunction order Ram Dhari sold part of the suit land in favour of defendants No. 5 and 6 on 26.05.2025 by way of sale deed in question. The suit was decreed on the basis of statement made by Ram Dhari on 21.02.2009 thereby relinquishing 1/5th share in favour of plaintiff out of total land. When plaintiff approached revenue authorities for sanctioning of the mutation on the basis of

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decree so passed, the revenue authorities refused to sanction the mutation and defendants No. 5 and 6 attempted to interfere in the possession of the plaintiff on the basis of sale deed in question, hence the suit.

2. Defendants contested the suit by claiming that sale deed has been executed by Ram Dhari for consideration as he was owner of the suit land and defendants No. 5 and 6 are bonafide purchasers for consideration.

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

“1) Whether the plaintiff is entitled to decree for declaration and permanent injunction on the grounds mentioned in the plaint?OPP

2) Whether the suit is not maintainable in the present form?OPD

Whether suit is bad for want of proper court fee?OPD 3)

4) Whether plaintiff has filed false and frivolous suit? OPD

5) Whether the plaintiff has no cause of action and locus standi to file the present suit?OPD

6) Whether plaintiff is estopped from filing the present suit by his own act and conduct?OPD

7) Whether suit is bad for non-joinder and mis-joinder of necessary parties?OPD

8) Relief.”

4. After evidence was led by both the parties, the suit as well as appeal of the appellant-plaintiff was dismissed and the appellant-plaintiff has approached the Court assailing the judgment and decree passed by the First Appellate Court. The judgment and decree has been assailed on four grounds that the sale deed in favour of defendants No. 5 and 6 was hit by lis pendence. No issue of suit property being ancestral and coparcenary of joint Hindu family was framed. The sale deed was executed in favour of defendants No. 5 and 6 without any legal necessity. The suit was within the period of limitation.

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5. After considering the arguments and going through the judgments of the Courts below, I am of the considered opinion that there is no illegality and infirmity in the well reasoned judgments of the Courts below. As regards limitation is concerned, limitation to challenge the sale deed is three years and the sale deed was executed on 26.05.2005 and the present suit was filed on 24.12.2010 well beyond the period of three years from the date of execution of the sale deed and in evidence it has been duly proved on record that the appellant plaintiff came to know about the impugned sale deed within 15-20 days from its execution as is clear from Ex.D1. Copy of the testimony of the plaintiff recorded in that suit so the suit was rightly held to be barred by limitation.

6. As regards non framing of issue with regard to suit property being ancestral and coparcenary property is concerned, it is settled law that when parties are alive to their pleadings and has led evidence to that effect and the Court has recorded finding with regard to the pleas raised by the parties in the plaint, non-framing of particular issue pales into insignificance. The learned Courts below has elaborately dealt with the plea that suit property is ancestral and coparcenary property of joint Hindu family and it was observed that father of the plaintiff Ram Dhari has inherited 1/9th share out of his suit land measuring 33 kanal 15 marla by inheritance from his father and copy of mutation is Ex.P10 whereas the share of Ram Dhari is 19/72 in the suit land and it has not been explained as to how the share swelled to 19/72 from 1/9th and the Courts rightly concluded that some non-ancestral land has been merged in the same and when the ancestral and non-ancestral land has been merged in such a manner that it is difficult to segregate, then the entire property is to be taken as self acquired. When the entire property was held to be self acquired, there is no question of any restriction upon Ram Dhari to alienate the land owned by him so the sale deed

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cannot be assailed on the ground that there was no legal necessity to alienate the suit land.

7. As regards sale having been hit by principle of lis pendens is concerned, principle of lis pendens is to the effect that any alienation during the pendency of the suit would be subject to the final decision of the suit and in the present case the previous suit was decided on the basis of compromise between appellant-plaintiff and his father Ram Dhari. Ram Dhari made a statement on 21.02.2009 whereby he has relinquished 1/5th share out of the land owned by him and it is settled law that a person can relinquish what he has. It is admitted case that sale deed was executed much before the statement made by Ram Dhari relinquishing his 1/5th share. So when sale deed was executed on 26.05.2005 Ram Dhari was not owner of that land which he has transferred by sale deed in favour of defendants No. 5 and 6 of the suit and he could have transferred only 1/5th share of the land owned by him on the date of making statement. So both the Courts has rightly concluded and there is no merit in the appeal. The same stands dismissed.

8. Since the main appeal stands decided, the miscellaneous application(s), if any, stand disposed of accordingly.

**(VIRINDER AGGARWAL)
JUDGE**

20.08.2025

P.Singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No