

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

2025:PHHC:132466



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RSA-1480-2024 (O&M)
Date of Decision: 22.09.2025

Shakuntala Devi (since deceased) through her LRs

...Appellants

Versus

Phoolpati and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

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

VIKRAM AGGARWAL, J.

This is plaintiffs' appeal against the judgment and decree dated 18.08.2023 passed by Additional District Judge, Rohtak, dismissing the appeal against the judgment and decree dated 15.10.2019 passed by the Court of Additional Civil Judge (Senior Division), Rohtak, vide which the suit of the plaintiff was dismissed.

2. For the sake of convenience and clarity, party shall be referred to as per their original status.

3. The plaintiffs filed a suit for declaration with consequential relief of perpetual injunction against the defendants. It was averred that the plaintiffs were owners in

possession of a residential house (built on the land measuring 302 sq. yards – fully described in the plaint), situated at Adarsh Nagar within Municipal Limits of Rohtak. Late Ram Chander, husband of plaintiff No.1 and father of plaintiffs No.2 to 5, had also purchased a plot measuring 100 sq. yards from late Hazari for a sale consideration of Rs.3,000/- in a family partition/settlement on 01.01.1978 (hereinafter referred to as 'the suit property'). It was further claimed that father of plaintiffs No.2 to 5 and aforesaid Hazari belonged to a common ancestor(s). Ram Chander had purchased a plot measuring 202 sq. yards vide sale deed dated 22.10.1969 out of Khasra No.8292 situated at Adarsh Nagar, Rohtak and had also purchased another adjoining plot of 100 sq. yards from Sh. Chand Ram vide sale deed dated 30.08.1973. Said Ram Chander passed away on 01.03.2006 and thereafter, the plaintiffs became owners in possession of the aforesaid land.

4. The plaintiffs claimed that defendant No.6, being a member of land mafia, had got created a false, frivolous and forged sale deed dated 21.12.2012 from defendants No.1 to 4 in favour of defendant No.5 and thereafter, defendants No.5 and 6 started threatening to forcibly dispossess the plaintiffs from the suit property. The said sale deed dated 21.12.2012 was alleged to be illegal, null and void and not binding on the ownership and possessory rights of the plaintiffs.

5. Defendants No.1 to 4 filed their joint written statement taking preliminary objections regarding maintainability; cause of action; limitation; jurisdiction etc.

On merits, it was asserted that Hazari was owner in possession of 100 sq. yards of plot and after his death, defendants No.1 to 4 became owners in possession of the said land as his legal heirs and mutation in this regard was also sanctioned in their favour. It was further averred that they had rightly sold the said property to defendant No.5 vide sale deed dated 21.12.2012 for a sale consideration of Rs.12,40,000/-. The plaintiffs' possession over the suit property was denied besides denying the factum of the alleged family settlement/partition between Hazari and Ram Chander.

6. Defendants No.5 and 6 filed their joint written statement. Preliminary objections regarding estoppel; maintainability; cause of action, jurisdiction etc., were taken. They denied the factum of the plaintiffs being the owners or in possession of the suit property. Rather, they admitted that defendants No.1 to 4 were owners of the suit property.

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

1. Whether the plaintiffs are entitled to decree for declaration to the effect that they be declared as owners in possession of 100 sq. yards and sale deed No.7468 dated 21.12.2012 be declared as null and void?
OPP
2. Whether the plaintiffs are entitled to decree for perpetual injunction, as prayed for? OPP

3. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
4. Whether the plaintiffs have no cause of action to file the present suit?OPD
5. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD
6. Whether the plaintiffs have not come to the Court with clean hands? OPD
7. Relief.”

8. Parties led their respective evidence.

9. The trial Court dismissed the suit vide judgment and decree dated 15.10.2019. Appeal filed by the plaintiffs was also dismissed vide judgment and decree dated 18.08.2023 passed by the first Appellate Court.

10. I have heard learned counsel for the parties and have also perused the record.

11. Learned counsel for the appellants submits that both Courts have failed to appreciate the existence of document Mark-A, vide which the family settlement took place in 1978. It is further submitted that the said document had never been challenged by Hazari during his life time or even by his legal heirs. Learned counsel further argues that the family settlement being binding upon the parties, clearly operates as estoppel, but such aspect has wrongly and illegally been discarded by both Courts. It is also argued that Hazari and Ram Chander (husband of plaintiff No.1 and father of plaintiffs No.2 to 4) descended from a common ancestor and, therefore, there was no illegality in the family

settlement arrived at between them. It is further argued that as per the settled law, a family settlement does not require registration and in terms of the provisions of Section 53-A of Transfer Property Act, relinquishment of his/her share by a family member by way of an affidavit, is also permissible. Learned counsel further argues that in any case, presumption of correctness was attached to Mark-A, being more than 30 years old document and defendants No.1 to 4 having not disputed the signatures of Hazari on the said document, there was no occasion for the Courts below to discard the said document.

12. I have considered the submissions made by learned counsel for the appellant, but find the same to be devoid of merit.

13. Indisputably, document Mark-A is not an exhibited document and, therefore, both Courts have rightly found that the said document could not be read into evidence. Even otherwise, it was found that the recitals contained in the said document rather indicated that it was actually a sale transaction and Hazari and Ram Chander were not real brothers. Still further, Mark-A had clearly mentioned that vide deed No.261 dated 22.10.1969, Hazari had become owner of 100 sq. yards of plot in Khasra No.8292/1 which clearly established that the suit property was self acquired property of Hazari. It was further found that document Mark-A was described as a family partition document in order to avoid requisite stamp in registration fees on the said

document. Under these circumstances, the said document was held to be a sale deed and not a family partition document.

14. Still further PW-6 Shakuntla and PW12-Sanjay deposed that in the jamabandi Ex.D/A, the name of Hazari was reflected as owner of the suit property. On the basis of the said deposition, it was found that though Ram Chander (predecessor of the plaintiffs) was stated to have acquired ownership of the suit property on 01.01.1978, the plaintiffs had made no efforts to move the revenue authorities to incorporate their names in the concerned revenue record qua the suit property and such conduct of theirs did not appeal to the common logic. It was also found that as long as the plaintiffs did not challenge the mutation of inheritance recorded in favour of the legal representatives of Hazari, they could not seek any declaration qua the sale deed executed by defendants No.1 to 4 in favour of defendant No.5.

15. Both Courts, have recorded concurrent findings of facts on the basis of evidence led by the parties. Learned counsel for the appellants could not dispute the factum of the document Mark-A, being a marked document and not having been proved in accordance with law was not admissible in evidence. Even otherwise, on the basis of other evidence available on record, the finding recorded by both Courts that unless the plaintiffs challenged the mutation of inheritance in favour of defendants No.1 to 4, they could not challenge the sale deed executed by the said defendants in favour of

defendant No.5, cannot be said to be suffering from any illegality.

16. In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

17. Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

22.09.2025

ds

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No