

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

RSA NO.2360 OF 1986 (O&M)
DATE OF DECISION : 4th FEBRYARY, 2015

Sohan Lal & ors.

.... Appellants

Versus

Bhajan Lal & ors.

.... Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. Alok Jain, Advocate for the appellants.

None for the respondents.

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SURINDER GUPTA, J.

1. Bhajan Lal-respondent no.1 filed suit seeking relief as follows:

“That the plaintiff, therefore, prays that a decree for declaration to the effect that the plaintiff and defendants 12 to 14 are co-owners with the other defendants in respect of khasra No.162 (2-0) and the mutation No.214 is null and void and is ineffective on the rights of the plaintiff and defendants 2 to 14, be passed in their favour and against the defendant 1 to 11. The defendant No.1 be also restrained from alienating khasra No.162 or raising unauthorized construction thereon illegally without getting it partitioned. The defendants 1 to 11 be also restrained from blocking the common passage shown at point D of the site plan, by way of a decree for permanent injunction against them so that the plaintiff and defendants 12 to 14 are not deprived of enjoying their haveli through the said passage. Or any other relief which the Hon'ble Court deems proper be also granted.”

2. The case of plaintiff-respondent no.1-Bhajan Lal, in brief, is that forefather of parties owned land bearing khewat khatauni no.93/126, khasra no.163 (1-17) situated at village Bhambrola Jogi. Anufa-common ancestor of plaintiff and defendants, also owned a house situated in Abadi of village Bhambrola Jogi, boundaries of which were as follows:

East	:	Rasta
West	:	Property of Nihala
North	:	Property of Kamu
South	:	Property of Kashi.

3. Lakhi and Chandi were residents of village Bhambrola Jogi on land bearing khasra no.162 (2-0) khewat khatauni no.94/127, which was situated towards East of Khasra no.163 owned by the parties. The residential house of Anufa @ Ram Charan was also situated towards East of property of Lakhi and Chandi. Lakhi and Chandi made offer to Anufa for exchange of their land bearing khasra no.162 with the residential house of parties. The offer was not honoured by Anufa during his lifetime. After death of Anufa said Lakhi and Chandi again reiterated that offer, which was accepted by the parties and an exchange of land bearing khasra no.162 with residential house owned by the parties in the village, took place. As a result of exchange heirs of Anufa, i.e. the parties to suit, became owner of land bearing khasra no.162 (2-0) in equal shares and Lakhi and Chandi became owner of the residential house of the parties to the suit, situated towards East of the property owned by respondent Lakhi and Chandi. Sohan Lal-defendant no.1-appellant no.1 got mutation no.214 dated 08.02.1954 sanctioned in his favour vide which he became sole owner of the land bearing khasra no.162. The names of other owners were left

out with malafide intention in order to deprive them of the ownership rights acquired in khasra no. 162 under exchange. Mutation no.214 was illegal and not binding on the rights of plaintiff and defendants no.2 to 14 as the same was sanctioned at their back.

4. Plaintiff-Bhajan Lal, defendant-appellant Sohan Lal, Deep Chand, their brother Naval and other legal heirs of Anufa after exchange of their house with Lakhi and Chandi constructed their own house in khasra no.163, which is situated towards west of khasra no.162. For beneficial enjoyment of the *Haveli* situated in khasra no.163, as shown in the site plan with the letter ABCD, a passage marked as D and shown with red colour in the site plan Ex.P-1, was left, which was connected with common passage. Defendants no.1 to 11(appellants) threatened to block common passage with an intention to infringe upon right of respondents. They also threaten to raise unauthorized construction on khasra no.162 with intention to deprive the respondents of their 1/6th share in this land, without getting it partitioned. Hence the suit.

5. The suit was contested by defendants no.1 to 4 and 6 to 11 in their joint written statement. It was denied that Anufa was owner of the house situated in *abadi* of village Bhambrola and that parties to the suit became owner of khasra no.162 in equal share. The *haveli* situated in khasra No.163 stood partitioned by way of mutual partition. It was also denied that defendant no.1-appellant-Sohan Lal played any fraud, dishonesty or misrepresentation while getting mutation no.214 sanctioned in his favour. The existence of common door and passage, as shown in the site plan Ex. P-1, was denied. All averments of the plaintiff-respondent were contested and controverted, inter

alia pleading that they do not possess any share in the land bearing khasra no.162.

6. The pleadings of parties led to framing of issues as follows:

- (i) Whether a mutual exchange of Khasra No.162 with the residential house owned by the parties inside the village was effected by virtue of which the parties became owners of Khasra No.162 in equal shares and Lakhi and Chandi became owners of the residential house as alleged in para No.4 of the plaint? OPP.
- (ii) Whether the ancestor of the parties was owner of land mentioned in para No.1 of the plaint? OPP.
- (iii) Whether the suit is barred by the provisions of CPC ? OPD.
- (iv) Whether the suit is also barred by the provisions of O 2 R. 2 C.P.C.? OPD.
- (v) Whether the plaintiff is estopped by his own acts and conduct from filing the present suit? OPP.
- (vi) Whether the suit is barred by limitation? OPD.
- (vii) Relief.

7. The suit was dismissed by learned Sub-Judge, 1st Class, Palwal holding that plaintiff-respondent no.1 had failed to prove that khasra no.162 was exchanged in lieu of house owned by the parties. Bhajan Lal filed appeal which was allowed by learned Additional District Judge(II), Faridabad vide impugned judgment dated 04.03.1986 and suit of the plaintiff-responded no.1 was decreed as follows:

“In view of my above findings, the judgment and decree of the learned trial Court is set-aside and the suit of the plaintiff is decreed to the effect that he and his brothers defendant No.12 to 14 are joint owners of the land of khasra no.162 (to the extent of 1/6 share) with the defendants and the

defendant no.1 to 11 are restrained from raising any construction thereof before getting it partition. Decree-sheet be prepared accordingly.”

8. In this regular second appeal appellants have sought setting aside of the judgment passed by appellate Court below.

9. I have heard learned counsel for the parties and perused the paper book and lower Court record with their assistance.

10. The dispute pertains to land bearing khasra no.162 (2-0). The case of plaintiff-respondent no.1 is that the land bearing khasra no.162 was given in exchange by Lakhi and Chandi, who got a residential house, jointly owned by the parties. The appellants have denied this averment of plaintiff-respondent no.1.

11. In order to prove their contention appellants have placed reliance on mutation no.214 which was sanctioned on 08.02.1954. Copy of this mutation has been placed on file as Ex.P-3. Appellate Court below has observed that Sohan Lal became owner of khasra no.162 vide mutation no.214 dated 08.02.1954. The very basis of the assumption of appellate Court below is erroneous and based on misreading of mutation order Ex.P3, which is in Urdu script and on translation of this document it transpired that it pertains to land given in exchange bearing khasra no.405 (0-7) (*Banjar Qadeem*) and not to land bearing khasra no.162 (2-0). The copy of mutation order Ex. P-3 shatters the very basis of the case of plaintiff-respondent no.1. In these facts and circumstances, it is not material as to how Sohan Lal became owner of land bearing khasra no. 162 (2-0). The onus was on plaintiff to prove that Lakhi and Chandi have given land bearing khasra

no.162 in lieu of residential house owned by the parties in the village. No evidence, whatsoever, has been placed on file by plaintiff-respondent no.1 to connect land of khasra no.162 with land which was subject matter of mutation no.214. As per the Jamabandi for the year 1977-78 Ex. P-4 land bearing khasra no.162 is owned by Sohan Lal-appellant. Plaintiff-respondent no.1 had been admitting this fact that Sohan Lal was owner of land bearing khasra no.162, in earlier litigation as well. In the absence of any evidence on record, there was no basis of observation by the appellate Court below that from mutation Ex. P-3 it stands established that Sohan Lal obtained land bearing khasra no.162 (2-0) in exchange of some house jointly owned by the parties. It is evident that the appellate Court below has misread mutation order Ex. P-3 and did not notices that it pertained to land bearing khasra no.405 (0B-7B).

12. As a sequel of my discussion above, the findings of appellate Court below are perverse being based on misreading of evidence, as such, are not sustainable in the eyes of law. This appeal has merit and the same is accepted. Judgment and decree passed by the appellate Court below is set aside and that of the trial Court is restored and affirmed.

13. Keeping in view the peculiar circumstances, the parties are left to bear their own costs.

14. Decree sheet be prepared accordingly.

4th February, 2015
'raj'

(SURINDER GUPTA)
JUDGE