

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1159 of 2012 (O&M)

Date of Decision.31.08.2015

Municipal Council, Karnal now Municipal Corporation Karnal

.....Appellant

Versus

Smt. Harjeet Kaur and others

.....Respondents

2. RSA No.1160 of 2012 (O&M)

Municipal Council, Karnal now Municipal Corporation Karnal

.....Appellant

Versus

S. Raminder Singh and others

.....Respondents

Present: Mr. R.S. Kundu, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. Delay of 231 days in refiling the appeals is condoned.
2. The defendant, who resisted an action for mandatory injunction and for possession, is the appellant before this Court. The plaintiffs claim themselves to be sons of Mukund Singh who had purchased the property as evacuee property in an auction held by the Rehabilitation Department in the year 1956. The sale was said to have been made in the year 1961 but cancelled. The sale certificate had been issued in favour of the plaintiffs as sons of Mukund Singh, who was the auction purchaser, by a document dated 06.01.1965. The description of

property merely had referred to it as agricultural plot No.13 at Karnal. The plaintiffs were relying on mutation entries and jamabandies which had been subsequently made in their own names in respect of the suit property. The defence was that the property purchased in auction was not the property which the plaintiffs were claiming and that the sale certificate granted made merely a reference to agricultural plot No.13 and it made no reference to khasra number or boundaries. The defence was that they are in possession of the property all along and they cannot be ousted.

3. The two Courts below have rejected the defence and granted the decree in favour of the plaintiffs. The argument made by the defendant is with reference to lack of description in the sale certificate and the authority to take a correlation between what was conveyed at the auction and what was brought out in the sale certificate to the entries that had been made at the mutation and jamabandies. According to him, defendant as person in possession has no need to prove his title any more than pointing out to the fact that the plaintiff has no title to the property.

4. He cannot ask for impossible of what is not available in a document. While the certificate does not set out a description and it is not possible to incorporate a description there, the case has to be considered only from the documents which were subsequently filed and which the plaintiffs were relying on. The plaintiffs were, therefore, bringing proof of the mutation as having been made in their favour in relation to the property and would treat the mutation to be effective only on account of the sale certificate. I would give value to the same

unless the defendant is able to show that the sale was with reference to some other property and the entries made were wrong. If there was also a jamabandi which had entered in their names in respect of the suit property, I will take that correlation of auction sale as being with reference only to the suit property has been adequately made. For argument's sake, if it were to be contended that the certificate of sale related to some other property and plaintiffs were making a claim to the property by virtue of mutation and revenue entries on the basis of jamabandi, the plaintiffs were entitled to secure a decree in the manner done by the Court, in the absence of any proof of possession by the defendant on the suit property.

5. I find no scope for interference in the judgment passed by the trial Court which was affirmed by the Appellate Court in appeal. There is no substantial question of law for consideration in the second appeals. Both the second appeals are dismissed.

(K. KANNAN)
JUDGE

August 31, 2015
Pankaj*