

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

**Regular Second Appeal No.4474 of 2012 (O&M)
Date of Decision: January 30, 2015.**

Joginder Singh and another

.....APPELLANT(s).

VERSUS

Pala Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Harkesh Manuja, Advocate
for the appellant (s).

SURINDER GUPTA, J.

The dispute in this case pertains to land bearing khasra No.5//12/1 measuring 4 kanals 4 marlas situated in revenue estate of village Jansli, Tehsil Rajpur, Hadbast No.261.

The case of the respondent No.1-plaintiff, in brief, is that the suit land was owned by Bhawna Ram son of Gorai Ram as it was allotted to him at the time of consolidation. After allotment, mutation of land measuring 11 kanals 13 marlas including suit land was sanctioned in favour of Gorai Ram and the entry to this effect was incorporated in the jamabandi for the year 1972-73. Gorai Ram sold land measuring 11 kanals 13 marlas to the respondent-plaintiff vide sale deed dated 03.03.1978 for a sale consideration of ₹9,000 and on the basis of that sale, mutation No.1929 of the suit land was sanctioned and respondent No.1-plaintiff continued in possession of the land purchased by him. Entry to this effect was incorporated in the jamabandi for the year 1987-88. A month before filing of the suit (suit was filed in May,

1999), the defendants including the appellants Joginder Singh and Gurdial Singh started proclaiming themselves to be owner of the suit land. On enquiry from the revenue authorities, plaintiffs found that wrong entries have been incorporated in the revenue record in their favour despite the fact that respondent No.1-plaintiff was owner in possession of the suit land. He pleaded with the defendants not to proclaim the ownership of the suit land but in vain, which resulted in filing the suit.

In the written statement filed by the appellant Joginder Singh, previous owner of the suit land Harbans Singh and Hari Ram Ex-Patwari, it was alleged that suit land bearing khasra No.5//12/1 (4K-4M) was owned by Harbans Singh as per jamabandi for the year 1967-68 and 1972-73. Gorai Ram never became owner of this land. The entry, if any, made in favour of Gorai Ram in the revenue record was made without any basis. Consequently, the sale deed and the subsequent mutation on the basis of sale deed bearing No.1929 in favour of respondent No.1-plaintiff in respect of suit land, is illegal, wrong and liable to be set aside.

Harbans Singh son of Waryam Singh had sold land including suit land bearing khasra No.5//12/1 (4K-4M) to Amarjit Singh, Paramjit Singh and Surjit Singh vide sale deed bearing No.4125 dated 9.2.1982 and mutation No.2102 to this effect was sanctioned on 08.06.1982. Amarjit Singh and Paramjit Singh further sold their 2/3rd share in the land measuring 67 kanals 4 marlas which including land bearing khasra No.5//12/1 (4K-4M) vide sale deed No.1501 dated 17.06.1982 to appellants Joginder Singh and Gurdial Singh sons of Bakat Singh and mutation to this effect bearing No.2136 was sanctioned on 31.12.1982. Surjeet Singh sold his 80/1350 share to Darshan Singh son of Labh Singh vide sale deed No.3233 dated

06.12.1982 and mutation No.2139 on the basis of said sale was sanctioned on 15.03.1983. Pala Singh plaintiff was witness to all the agreement to sell by Amarjit and others. He was also attorney of vendor of land qua which mutation No.2136 was sanctioned. The land was further sold by Surjeet Singh to the extent of 256/1350 share to appellants Joginder Singh and Gurdial Singh sons of Bakat vide sale deed No.3222 dated 06.12.1982.

Civil Judge (Junior Division), Rajpura decreed the suit for declaration that respondent No.1-plaintiff is lawful owner of the suit land. The appeal filed by the appellants was dismissed by Additional District Judge, Patiala.

Learned counsel for the appellants has argued that the Courts below have relied upon the evidence beyond pleadings. Respondent No.1-plaintiff came up with a plea that suit land bearing khasra No.5//12/1 (4K-4M) was allotted to Gorai Ram while in evidence, he produced document to prove that the land was in fact allotted to Harbans Singh defendant No.1(since deceased) and it was by way of exchange that Gorai Ram became the owner, a fact, which is not pleaded, could not be looked into by the Courts below. As the plaintiff failed to prove the plea taken by him in the plaint, the Courts below have committed grave error of law and fact while allowing his claim.

The basis of claim of appellants over the suit land is the sale deed dated 09.02.1982 executed by Harbans Singh in favour of Amarjit Singh, Paramjit Singh and Surjit Singh. Amarjit Singh and Paramjit Singh further sold their share in the land to the appellant vide sale deed dated 17.06.1982. A perusal of jamabandi for the year 1977-78 (Ex.D3), relied upon by the appellants, shows that in column No.12, a note was given in the

jamabandi that vide mutation No.1899, the ownership has been changed and the reference of partition No.1856 was also given. This shows that there was mention in the revenue record that Harbans Singh whose name was mentioned in column No.4 as owner was in fact not owner of the land and this had given a reason to the buyer to make investigation regarding mutation No.1899 and 1856. Mutation No.1899 Ex.PX was with regard to change of ownership under the orders of Consolidation Officer, Sangrur dated 29.12.1976, as per which land bearing khasra No.5//12/1 (4K-4M) was mutated in favour of Gorai Ram. Same land was also mutated in the name of Harbans Singh and other persons under the order of Consolidation Officer. Mutation No.1899 was never challenged by Harbans Singh or any other person at any point of time.

The above facts and circumstances clearly depict that Gorai Ram was owner of the suit land under the order of Consolidation Officer and evidence produced by Pala Singh respondent No.1-plaintiff was in consonance with his pleadings. Even otherwise, the plea of Pala Singh was that Gorai Ram was owner of suit land and this fact has been proved on file. It was immaterial that whether Gorai Ram was owner under order of a particular authority or under some other arrangement. It was for Harbans Singh to challenge the title of Pala Singh over the suit land but he has never come forward. This reflects that he had admitted and conceded Gorai Ram, as owner of the suit land and had also not challenged the alienation made by him.

On perusal of paper book, judgments of the Courts below, pleadings and evidence (copies of which have been made available by learned counsel for the appellants during the course of arguments), I find no

legal of factual infirmity in the judgments of Courts below, calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits. Dismissed.

January 30, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE