

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

RSA No.4965 of 2012 (O&M)

Date of decision:28.01.2015

ATIKSH KUMAR AND OTHERS

..... Appellants

VERSUS

**HARYANA AGRICULTURE MARKETING BOARD, PANCHKULA
AND OTHERS**

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHAVIR SINGH CHAUHAN

Present: Ms. Peeush Gagneja, Advocate
for the appellants.

MAHAVIR SINGH CHAUHAN J. (ORAL)

Judgment/decreed dated 10.04.2008 passed by learned District Judge Sirsa (hereinafter referred to as the 'First Appellate Court') affirming the judgment/decreed dated 16.01.2014 passed by the learned Civil Judge, Junior Division, Sirsa (hereinafter referred to as the 'trial Court') dismissing the suit for declaration of ownership, qua suit property, of plaintiffs, proforma respondents No.1 to 9 herein, is under challenge in this regular second appeal brought by the unsuccessful plaintiffs.

The appeal is barred by time but I have heard learned counsel for the appellants on merits.

It is argued by learned counsel for the appellants that the land in question, admittedly, is in possession of the appellants and has not been acquired by the State of Haryana. It is also argued that the land in suit is owned by the appellants and as such mutation No.343 is of no consequence. The entry regarding mutation is also stated to be outcome of fraud.

A perusal of the impugned judgment would reveal that case of the appellants before the Courts below is that Mani Ram son of Khola Ram

was owner in possession of land measuring 8496 sq. yards and 4 sq. ft, in village Suchan as per details given in the headnote of the plaint. After the consolidation proceedings, three sons of Mani Ram were entitled to the suit land as Mani Ram died in the year 1948 i.e. prior to consolidation proceedings but they were not allotted any land in those proceedings in lieu of Khasra numbers detailed in para No.2 of the plaint as mutation No.343 of July 30, 1921 had been sanctioned in favour of the respondents. This mutation, according to case of the appellants was not binding upon them as the land was never acquired in due course of law and the mutation was entered without notice to Mani Ram or his father or the plaintiffs.

The suit was contested by the respondents by filing written statement, wherein, all the allegations of the plaint were denied and a number of preliminary objections were pleaded.

Issues were framed. Parties adduced evidence in support of their respective pleas and were heard by the learned trial Court.

On the basis of evidence available on record, learned trial Court, vide judgment/decreed dated 16.01.2004 dismissed appellants, as also other plaintiffs, suit to seek declaration and to restrain the respondents from dispossessing them from the suit land except in due course of law.

Judgment/decreed dated 16.01.2014 was challenged by way of Civil Appeal no.125 of 2004/2006. After contest, appeal has been dismissed by the learned Appellate Court vide judgment/decreed dated 10.04.2008.

Plea of the appellants (who are legal heirs of plaintiffs No.9 & 10 and other plaintiffs have chosen not to challenge findings of Courts below) is based on ownership as regards the suit property and fraud as regards sanctioning of mutation No.343. However, it has been concurrently

found by the Courts below that the appellants have not been able to bring any evidence, whatsoever, to show their ownership over the suit land and no circumstance of fraud has either been pleaded or proved even though, going by settled position of law, a plea based on fraud has to be specifically pleaded and has to be proved beyond reasonable doubt as in criminal proceedings. Nothing to the contrary could be shown during the course of hearing.

Moreover, the appeal is not shown to involve any question of law much less a substantial question-of-law. Consequently I do not find any reason to interfere with the concurrent findings of fact recorded by the Courts below.

Dismissed.

No costs.

(MAHAVIR SINGH CHAUHAN)
JUDGE

28.01.2015

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