

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

RSA No.1821 of 2013 (O&M)
Date of Decision.14.12.2015

Mehar Singh

.....Appellant

Vs.

Smt. Amarjit Kaur and others

.....Respondents

Present: Mr. Amardeep Singh Gill, 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. The plaintiff is the appellant. He sued for a declaration of title to the property in Khasra No.4/2 contending that in the document of purchase on 27.01.1993, the property had been described as property in Khasra No.7/1 which was a mistake for Khasra No.4/2. The mistake was found out only when the defendant started laying false claim to property contending that he had obtained a mutation in respect of the property in Khasra No.4/2 in the year 1971 and the entry in the mutation is erroneous. The defendant's contention was that he had purchased four items of properties on 3.7.1969 from one Jagan Nath and out of which two items had been wrongly described. The wrong description was with reference to 90// 10 min /0-3 and 19//10/1-2. The property that the vendor Jagan Nath had was only the property in Khasra No.4/2 in the consolidation comprising of half share therein and as soon as the mistake was learnt, the mutation for the property in Khasra No.4/2 for half share was made in favour of the purchaser Jarnail

Singh. The defendant, therefore, would contend that what was purchased included only the property in half share in Khasra No.4/2 which is the suit property and mutation entered in the year 1971 was a testimony to the mistake and the enjoyment and ownership of the property was only to the defendant.

2. The property which the plaintiff claims as wrongly described is set out as property with the following boundaries:-

North by Mehar Singh (the plaintiff himself)
East by Pritam Kaur
South by the purchaser (Mehar Singh)
West by the road.

The counsel would state that the property in Khasra No.7/1 is the property referred to in the document as a property of the purchaser. If the boundary shown in his purchase refers to himself as the property owner on the South then it must be with reference to khasra No.7/1 only. If the plaintiff were to contend that the reference to himself as the owner in the South must be seen from the fact that he is owner of khasra No.7/1 then there must be a document of purchase other than the instant sale deed dated 27.01.1993 which the plaintiff was relying upon to prove his title to Khasra No.4/2 as well. If he has no other document other than the document filed in Court then the ownership to the property in Khasra No.7/1 must be shown as obtaining to him independently of the transaction dated 27.01.1993. He cannot claim ownership to khasra No.7/1 by virtue of purchase dated 27.01.1993 and also contend at the same time that the description of khasra No.7/1 is a mistake for khasra No.4/2. He cannot have the cake and eat it too. He must either give up his right to the property in Khasra No.7/1 in which the southern boundary owner cannot be himself or he can claim right in

Khasra No.4/2 and give up his claim in Khasra No.7/1 in which case the boundary on the South cannot be properly correlated. The plea of mistake in khasra number cannot, therefore, stand.

3. It is irrelevant that the defendant's purchase does not make a reference for Khasra No.4/2. If the plaintiff sues for declaration, it is for the plaintiff to succeed on his own strength and not on the weakness of the defence. In fact, there is not even a weakness. The defendant's contention that the property which he had purchased was actually in Khasra No.4/2 in half share and that is why a mutation was effected in the year 1971. It vindicates his stand that what he purchased was indeed the suit property. If the plaintiff had undertaken a proper enquiry before his purchase in the year 1993, he would have certainly come by information that a half share in khasra No.4/2 was all that the vendor was entitled to and the defendant had been shown as owner of remaining half share. The plaintiff had purchased the half share in khasra No.4/2 on the same day on 27.1.1993 and his purchase on the same day with reference to khasra No.7/1 ought to refer only to khasra No.7/1 and cannot be with reference to another half share in khasra No.4/2 as well.

4. The suit is speculative and rightly dismissed by the two Courts below. There is no merit in the second appeal. It is dismissed.

(K. KANNAN)
JUDGE

December 14, 2015
Pankaj*