

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

RSA No.331 of 2013
DATE OF DECISION:10.02.2015

Ramesh & ors.

...Appellants

Vs.

Suraj Bhan & ors.

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Shashi Kumar Yadav, Advocate
for the appellants.

Mr. Sanjay Mittal, Advocate
for respondent No.1.

AMIT RAWAL, J.(ORAL)

This Regular Second Appeal at the instance of appellants-defendants is directed against the judgment and decree of the trial Court whereby the suit of the respondent/plaintiff claiming declaration that he is owner in possession of khewat No.166 khatoni No.237 khasra No.463 and 464, measuring 0 Kanal 4 marla to the extent of half share has been decreed and the appeal filed by the appellants/defendants has been dismissed.

Mr. Shashi Kumar Yadav, learned counsel appearing on behalf of the appellants-defendants, in support of his grounds of appeal, submits that the Courts below have committed an illegality and perversity in misreading the documentary evidence and, thus, erroneously decreed the suit of respondent/plaintiff. In fact the sale deed dated 24.01.2006 executed by

predecessor-in-interest i.e Nihal Singh, father of the appellants, was in respect of land measuring 2 kanals 1 marla from khasras No.461 and another from khasra No.463 to the extent of half share. He has further submitted that the Courts below have committed an illegality while ordering the correction of sale deed with regard to other khasra Nos. i.e 463 and 464 whereas per the registered sale deed father of the appellant never sold or intended to sell any land from khasra Nos. 463 and 464. He further submitted that the name of the original defendant i.e Nihal Singh stood entered as owner in possession of two marlas of land in khasra No.461. He further submits that there is no other land left with the legal representative of Nihal Singh and the other half share is owned by the brother of Nihal Singh.

Mr. Sanjay Mittal, learned counsel appearing on behalf of respondent-plaintiff, in support of his submissions, contends that Nihal Singh did not have the ownership in respect of khasra No.461 bearing Khewat No.224 as there was only a stray entry in respect of said khasra number in Jamabandi for the year 2001-02 Ex. PW-2/1, whereas from the perusal of Jamabandi Ex. PW2/2 for the same in the year 2001-02, Nihal Singh had been shown the owner of khasra No. 463 and 464, whereas khasra No. 461 is not in the ownership of Nihal Singh but falls in different Khewat No. i.e 224 and of the fact that Nihal Singh was not owner of khasra No.461 therefore, filed suit for rectification of instrument as per provision of Section 28 of Specific Relief Act, 1963.

I have heard learned counsel for the parties and appraised the judgments and decrees of both the Courts below as well as record of the trial Court with their able assistance and am of the view that the appeal is liable

to be dismissed with the following reason.

It is a matter of record that a stray entry in Jamabandi Ex.PW-2/1 for the year 2001-02 would not confer the ownership in favour of Nihal Singh in khasra No.461 measuring 2 marlas, as Nihal Singh was owner of half share of khasra No.463 and 464 and total share in these khasra number came to 2 marlas and the plaintiff while sale deed had purchased 2 marlas from Nihal Singh. In fact, Nihal Singh was the owner of land measuring 1 marla each in half share in khasra No. 463 and 464 falling in khweta No.166, which is evident from the khasra/girdawari Ex.PW2/2 for the year 2001-02 as this fact could not be disproved by the appellant/defendants as they failed to rebut the documentary evidence.

The defendants have also not led any documentary evidence despite having been given many effective opportunities, including last opportunity and this fact has been noticed by the trial Court while decreeing the suit. In view of the fact that there is no substance in the aforementioned appeal, both the Court have rendered a finding of fact and law based on appreciation of oral and documentary evidence.

No substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal is dismissed.

10.02.2015
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(AMIT RAWAL)
JUDGE