

122.

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

Regular Second Appeal No.210 of 2015 (O&M)

Date of decision:07.12.2015

Aruna Devi

... Appellant

versus

Balwinder Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.Vishal Aggarwal, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

CM No.548-C of 2015

For the reasons stated in the application, delay of 130 days in refiling the appeal is condoned.

Application stands disposed of.

Regular Second Appeal No.210 of 2015

1. The defendant is the appellant who contested successfully at the trial court but lost out at the appellate court. A suit filed by the plaintiff that the sale deed dated 15.02.2005 must be rectified by substituting Khasra No.7R/25/1 as 11R/5/1/1. The extent was the same but the plaintiff's contention was that the

property that was sold was a property adjoining the *rasta* and described by boundaries specifically. At the time of purchase, he was under the impression that the Khasra No.7R/25/1 was adjoining the *rasta* which was given possession to him and sold to him, but it would appear that only Khasra No.11R/5/1/1 is situate adjoining the road and which he is actually in possession of but not referred to as such in the sale deed. The defendant denied that there was any confusion about the khasra number and there was no mutual mistake for a rectification. The contest was accepted by the trial court but the appellate court took its focus on what the boundary was and held that the property abutting the road being admittedly in Khasra No.11R/5/1/1, the reference to the khasra number as 7R/25/1 must be a mistake and accepted the plaintiff's case.

2. The learned counsel for the appellant states that he will not run away from the fact that the property in 7R does not abut the road as described in the sale deed and only the property in 11R abuts the road. They are adjoining properties and what was actually described by khasra number was alone sold and that was the property which was also in possession of the plaintiff. The plaintiff had not shown his actual possession with reference to the property in 11R and without proof of his possession, the rectification ordered was erroneous.

3. In my view, the arguments of the counsel for the appellant are not tenable. The identification of the immovable land that bears no visible proof of what the khasra number is, is best identified only with reference to boundaries. If the sale deed showed that the property conveyed was a property abutting the road, the plaintiff is entitled to show that it was the property which was intended to be sold and the possession he asserted must be with reference to what was described by boundaries. It is possible that the vendor explained the boundaries were a mistake and that the parties knew that they were transacting only with reference to khasra number. It was most unlikely that the parties could be conversant with khasra number better than the actual boundaries, for, boundaries are the best method of identifying the property whenever there is a dispute as regards the identity. If identify of the property as sold is established in the manner that the plaintiff was canvassing, the proof of possession must follow as established.

4. I will not find any error in appreciation of the relevant issues of the lower appellate court and decline to make any intervention. Second appeal is dismissed.

(K.KANNAN)
JUDGE

07.12.2015
sanjeev