

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1257 of 2014 (O&M)

Date of Decision: October 29th, 2015

Gurcharan Singh & others

...Appellants

Versus

Shingara Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.Abhinav Oberoi, Advocate for
Mr.S.S.Grewal, Advocate,
for the appellants.

AMIT RAWAL, J.

The appellant-plaintiffs are in Regular Second Appeal against the concurrent findings of facts, whereby the suit claiming declaration that they are owners of the land measuring 26 kanals 9 marlas bearing different khewat khatoni numbers and the sale deeds dated 16.9.2002, 9.4.2003 and 28.5.2003 are illegal, null and void and also seeking injunction restraining the defendants from selling, transferring, mortgaging and interfering in any manner in respect of the suit land, has been dismissed.

Mr.Abhinav Oberoi Advocate for Mr.S.S.Grewal, learned counsel for the appellant-plaintiffs submits that both the Courts below have committed illegality and perversity in dismissing the suit and as well as the appeal as there are umpteen number of documentary evidence on record to

show that property was recorded in the names of the appellant-plaintiffs. He further submits that the plaintiffs acquired the knowledge of the transfer of the land in favour of defendant Nos.3 and 4 few days before filing of the suit and even the mutation, which has been effected, was also illegal, null and void as it was done on the basis of some private exchange without complying with the provisions of natural justice at their back. Khata of the plaintiffs never remained joint with the defendants, therefore, the question of private partition did not arise. The mutation revealed that land measuring 26 kanals 9 marlas had been withdrawn from the holding of the plaintiffs and in lieu of that, they have been given 21 kanals 6 marlas land and defendant Nos.1 and 2 could not sell the land to defendant Nos.3 and 4 as the sale deeds are not binding upon their rights.

The defendants contested the suit by denying the claim of the plaintiffs being owners in possession of the suit land. He further submits that substantial questions of law arise for determination by this Court.

I have heard the learned counsel for the appellant-plaintiffs and appraised the paper book.

The defendants, as per the defence taken in the written statement, had proved on record documentary evidence to show that Gurdial Singh son of Tarlok Singh was the owner in possession of the land comprised in Khasra No.12//11/2/4-8, 12/8-0, 57//11/8-0, 58//15/1-6 measuring 21 bighas 4 biswas and he had exchanged the land with Harbans Kaur, Jarnail Singh, Gurcharan Singh (plaintiff), Sant Singh (plaintiff) and Karnail Singh and in exchange, land comprised in Khasra No.13//10/8-0, 11/8-0, 19/1/2-9, 20/8-0 at Village Kasiana was given to Gurdial Singh son

of Tarlok Singh and land measuring 58//4/2-0, 5/7-16, 6/4-16, 57//11/8-0, 58//15/1-6 was given to the plaintiffs and the land comprised in Khasra No.12//11/2/4-8, 12/8-0 was given to Harbans Kaur and Jarnail Singh and mutation No.1190 to this effect was sanctioned on 21.1.1988, much less the possession was also transferred. Gurdial Singh, thus, remained owner in possession of land measuring 66 kanals 13 marlas, including the suit land and he had sold the land to the defendants through sale deeds dated 16.8.1996 and 20.8.1998 and also delivered the possession. Khewat No.7 was not the land of joint owners, rather it was owned and possessed by Gurdial Singh as per the exchange, which took place in the year 1988. The mutation of the exchange has been placed on record as Ex.P4.

Plaintiffs feigned ignorance with regard to the factum of exchange, whereas the exchange has been proved on record and they were never owners of the property and, therefore, could not claim the relief. Gurcharan Singh plaintiff, in his cross-examination, admitted that he and his brother have effected the partition. He further identified the signature on Ex.D3 and further deposed that his brother also signed the same. He further deposed that mutation No.1623 was got effected regarding the partition. The khasra girdawries placed on record from 1990 onwards show that the property is in possession of the defendants and, therefore, the plaintiffs could not be entitled to the relief, much less setting-aside of the sale deeds and for injunction.

Ex.D3, in essence, has been admitted by the plaintiffs in the cross-examination. No other evidence has been proved on record to show that the plaintiffs were not aware of the exchange, much less mutation till

filing of the suit. Both the Courts below have rendered findings of fact.

I do not intend to differ with the findings rendered by both the Courts below, which are based on appreciation of oral and documentary evidence, much less no substantial question of law arises for determination by this Court.

The appeal is accordingly dismissed.

October 29th , 2015
ramesh

(AMIT RAWAL)
JUDGE