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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2691-2013 [O&M]

Date of Decision : February 5th, 2016

Jogi Ram and another

.... Petitioners

Versus

Amit Kumar and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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. Baljinder Singh, Advocate,
for the petitioners.

Mr. Sandeep Singal, Advocate,
for respondents No.1 and 2.

SHEKHER DHAWAN, J.

Present petition under Article 227 of the Constitution of India is challenge to the order dated 15.1.2007 [Annexure P/12] passed by Additional Civil Judge [Senior Division], Rohtak, whereby objections filed by the petitioners [Judgment Debtors/Objectors] were dismissed and order dated 15.1.2013 [Annexure P/13] passed by Additional District Judge, Rohtak whereby appeal filed against the order dated 15.1.2007 was dismissed.

2. Relevant facts of the case for the purpose of decision of this petition; that the Objectors/Judgment Debtors filed objection petition taking the plea that 0-3 biswas of land, as shown in khasra No. 10935/7984

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[property in dispute] was gifted by Baba Mani Singh in favour of Smt. Mittar Kaur and mutation was sanctioned in her favour. The disputed property was part of a bigger chunk of land which was originally allotted in favour of Baba Mani Singh. However, on 30.6.1978, Khasra No. 10935/7985 measuring 0.3 biswa was auctioned in favour of Hari Singh, father of the present petitioners. Sale certificate was issued. However, the possession of khasra No. 10935/7984, which is the disputed property, was delivered. Late on, Smt. Mittar Kaur filed a civil suit for possession with regard to suit land bearing khasra No. 10935/7984 which was decreed and the appeal filed by Hari Singh was dismissed. Execution petition was filed by Smt. Mittar Kaur for delivering the possession that there was error of mentioning of khasra number in the sale certificate. For that purpose, Hari Singh had filed an application for correction of khasra No. which was allowed by the Chief Settlement Commissioner vide order dated 12.5.1982 [Annexure P/1]. Subsequently, the revision petition was filed by Smt. Mittar Kaur against the said order before the Financial Commissioner [Revenue] and the same was accepted vide order dated 27.5.1987 [Annexure P/2] and the sale certificate issued in favour of Hari Singh was cancelled and it was also ordered that money be refunded to Hari Singh. That way, the auction in favour of Hari Singh was set-aside. The Executing Court accepted the objections filed by Hari Singh, but the said order was set-aside by this Court vide orders dated 15.02.1989 passed in Civil Revision No. 2862 of 1982.

3. Learned counsel for the petitioners submitted that the suit land was purchased by present petitioners and the possession was delivered to them. The respondents are not the owners of the property because Baba

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Mani Singh was the original owner of the land and the present respondents got their title on the basis of sale deed. However, the vendor of the respondents were not the owner of the property and as such, they could not pass on a legal and valid title in their favour and the respondents cannot step into the shoes of the owner. The Court below dismissed the objection petition without any reason and even without settlement of issues. Hence, said order is liable to be set-aside.

4. Learned counsel for respondents No.1 and 2 submitted that the facts are not disputed in any way that the respondents are the owners of the suit property bearing khasra No. 10935/7984. Present petitioners had purchased land comprised in khasra No. 10935/7985 in auction and the same was *rasta*. Later on, the same was cancelled by the authorities by passing order dated 27.5.1987 [Annexure P/2] and all these facts have already been considered by both the Courts below. There is no question of settlement of any issue. Hence, the present petition is without any merit and the same be dismissed.

5. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that both the Courts below have already appreciated the entire facts including the controversy that allotment made in favour of present petitioners already stood cancelled. The Courts below have rightly taken the view that in view of the order passed by Chief Settlement Commissioner dated 17.3.1994 [Annexure P/4], 7.1 standard acre of land of father-in-law of Smt. Mittar Kaur was excess. However, khasra No. 10935/7984 was owned by Smt. Mittar Kaur and Hari Singh was wrongly given its possession. That way, mutation No. 10704 was ordered to be set-aside. Hari Singh had filed a revision petition

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which was dismissed by Financial Commissioner Revenue vide order dated 17.3.1994. Thereafter the matter had come before this Court in Civil Revision No. 7843 of 1994 at the instance of Hari Singh and the same was also disposed of. Later on, Smt. Mittar Kaur filed LPA No. 45 of 1997 wherein it was held that Kharsa No. 10935/7984 was owned by Smt. Mittar Kaur and remained in her ownership and Hari Singh was wrongly given its possession. Learned Courts below have already recorded concurrent findings that vide sale deed dated 13.5.2005, possession of the property has already been given to the respondents and execution is not maintainable for recovery of possession. The said concurrent findings of facts do not call for any interference by this Court and the present revision petition is without any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

February 5th, 2016
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