

202

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

RSA-2986-2006 (O&M)

Date of decision : 26.04.2016

Puran Singh (Deceased through LRs)

... Appellant

Versus

Bhagwanti and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arihant Jain, Advocate and
Mr. Kanwal Goyal, Advocate
for the appellant.

Mr. Munish Raj, Advocate for
Mr. Sandeep S. Majithia, Advocate
for the respondents.

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?

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent finding of fact, whereby the suit seeking declaration to the effect that he is owner and in possession of land measuring 23 kanals 11 marlas contained in Khewat No.42/44 min, Khatoni no.62/63 and comprised in Khasra Nos.16R/16 (8-0), 17/2(6-0), 17R/19/1(3-12), 20/1(0-7), 22/1(3-12) and contained in Khewat No.50/33 Khatoni No.71 and comprised in Khasra No.16R/11/2(2-0) out of total area 2 Kanals 11 Marlas as per jamabandi for the year 1992-93 situated within the revenue estate of village Mirpur, H.B.No.155, Tehsil Dasuya, District Hoshiarpur, has been dismissed and the sale deed dated 01.04.1977 has

been cancelled.

Mr. Arihant Jain, Advocate and Mr. Kanwal Goyal, learned counsel appearing on behalf of the appellant-plaintiff submits that the appellant-plaintiff has purchased the land measuring 23 kanals 11 marlas vide registered sale deed dated 01.04.1977 consisting of following khasra number:-

“Rect. No.16 Killa 16/(8-0) 17/2 (6-0) 14/2 (2-11) out of it 2 kanals Rect. No.17 killa No.19/1(3-12) 20/1 (0-7) 22/1 (3-12)”

Since, the respondent(s)-defendant(s) was denying the ownership, the necessity arose to file the aforementioned suit. In the aforementioned suit, the original sale deed was brought on record as Mark-A with the aforementioned dimension and khasra number. However, the respondent(s)-defendant(s) had brought on record the duplicate copy of the sale deed as DW-3/B, wherein neither khasra No.19/1 having the area of 3 kanals 12 marlas is there, nor khasra number 20/1 area of 7 marlas is there, whereas the correct dimension and the particulars of khasra No.19/1 reads thus:-

“Rect. No.16 Killa 16/(8-0) 17/2 (6-0) 14/2 (2-11) out of it 2 kanals Rect. No.17 killa No.19/1(4-8), 22/1(3-12).”

At the best, the Court could have dismissed the suit but not cancel the sale deed, in the absence of declaration and counter claim and urges this Court to formulate the following substantial questions of law:-

1. Whether the judgment and decree of the lower Appellate Court is legal and justified, much less, sustainable.
2. Whether the Courts below could have, in the absence of counter claim and declaration, cancelled the sale deed dated 01.04.1977.

Mr. Munish Raj, Advocate for Mr. Sandeep S. Majithia, learned counsel appearing on behalf of the respondent(s) submits that both the Courts below have rightly exercised the jurisdiction as the appellant-plaintiff did not approach the Court with clean hand and intentionally sought declaration in respect of the different khasra number, than the one available in the title record maintained by the Sub-Registrar, Dasuya, thus, urges this Court for affirmation of the findings rendered by both the Courts below as no substantial question of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the Mark-A is the certified copy of the registered sale deed which has been placed on record and change of khasra number apparently cannot be said to have been done at the behest of the plaintiff, rather the area is lesser than one shown in the sale deed Ex.DW-3/B. On comparison of both the sale deeds, I am of the view that the sale deed Ex.DW-3/B bears the correct particulars as it has come through the office of the concerned Sub-Registrar, whereas Mark-A has come through the custody of the appellant-plaintiff. The interpolation in the aforementioned sale deed cannot be ruled out, moreover, the said document has not been proved on record in accordance with law. Be that as it may, the fact remains that the Court ought to have dismissed the suit and could not set aside the sale deed particularly the sale deed Ex.DW-3/B which bears correct khasra number.

Accordingly, the findings rendered by the trial Court and the lower Appellate Court viz-a-viz the cancellation of the sale deed shall be treated to be cancellation of the sale deed Mark-A, but sale deed Ex.DW-3/B with the correct particulars and the khasra number is hereby affirmed. Even otherwise,

the Court could not have cancelled the sale deed, in the absence of any counter claim or declaration. The appellant-plaintiff shall be entitled to declaration with regard to the following khasra number as mentioned in the plaint:-

***“Rect. No.16 Killa 16/(8-0) 17/2 (6-0) 14/2 (2-11) out of it 2
kanals Rect. No.17 killa no.19/1(4-8), 22/1(3-12).”***

Accordingly, the substantial questions of law as noticed above are answered in favour of the appellant-plaintiff and against the respondent(s)-defendant(s). Suit stands decreed in the aforementioned terms.

With the aforesaid observations, the appeal stands allowed.

26.04.2016
yogesh

(AMIT RAWAL)
JUDGE