

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.4028 of 2010 (O&M)

Date of Decision: October 20th, 2016

Meeto

...Appellant

Versus

Baljinder Singh

...Respondent

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

Present: Mr.R.V.S.Chugh, Advocate,
for the appellant.

Mr.S.C.Chhabra, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby suit seeking declaration that she is owner in possession of 1/18th share of land measuring 60 kanals 4 marlas, bearing Killa Nos.392/13-19, 406/4-15, 405/4-2, 134//10/1-16, 11/7-14, 135//8/7-7, 14/8-0), 15/8-19, 135//7/3-12, situated in area of Mansa Kalan, Tehsil and District Mansa and 1/18th share of land measuring 14 kanals 2 marlas bearing killa Nos. 393/2/2/6-16, 393//2/2 min/1-14, 393//2/2 min/5-12 situated in the same very area by challenging the judgment and decree dated 15.5.1993 passed in Civil Suit No.1037 dated 21.2.1992 and also mutation bearing No.22474 dated 27.7.1994, has been dismissed.

Mr.RVS Chugh, learned counsel for the appellant-plaintiff submits that the respondent-defendant had filed the aforementioned civil suit against the appellant-plaintiff and she had filed the admitted written

statement by giving 1/3rd share out of 1/6th share as per the judgment and decree dated 15.5.1993. As per the mutation, khasra numbers were changed and in this backdrop of the matter, the suit was filed. The stand of the appellant was that as per the corrected judgment and decree dated 9.1.1995, the mutation was effected, but the said correction is of the subsequent date, therefore, the mutation was liable to be set-aside, much less the decree. All these aspects have not taken care of by the Courts below and, thus, there is illegality and perversity.

Per-contra Mr.S.C.Chhabra, learned counsel for the respondent-defendant submits that the suit was not maintainable as provisions of Order 23 Rule 3 (A) and Order 12 Rule 6 CPC kept on same platform as per ratio decidendi culled out by the Hon'ble Supreme Court in **Daljit Kaur and another Versus Muktar Steels Pvt.Ltd. and another, 2014(1) R.C.R. (Civil) 625** and the most important fact that the area, even if khasra numbers are changed, remained the same. The ingredients of fraud or misrepresentation have not been pleaded and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties and appraised the paper book and of the view that once the suit was not maintainable, the remedy, if any, lied to the plaintiff to move an application in Civil Suit No.1037 dated 21.2.1992 in view of the findings given by the Hon'ble Supreme Court in Paras 14, 15, 16 and 17 of the judgment cited (supra). The fact remains that though the khasra numbers have been corrected vide judgment and decree, but the area remained the same. In my view, there is no loss to the appellant-plaintiff, yet the suit aforementioned was filed in the absence of fraud and misrepresentation, much less same having not been

brought on record. The Courts below, after examining the oral and documentary evidence, did not inclined to grant the relief.

For the foregoing reasons, I do not intend to differ with the concurrent findings rendered by the Courts below, which are based on appreciation of oral and documentary evidence. No ground for interference is made out.

Appeal stands dismissed.

October 20th2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No