

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

RSA No.1780 of 2011 (O&M)

Date of decision: 7.9.2016

Om Pal

... Appellant

Versus

S.S.Aggarwal

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.J.K.Verma, Advocate,
for the appellant.

Mr.Shailendra Jain, Sr.Advocate, with
Ms.Mannu Chaudhary, Advocate,
for respondent No.1.

Mr.H.S.Virk, Advocate,
for Mr.N.D.Achint, Advocate,
for respondent No.2.

AMIT RAWAL, J. (Oral)

The appellant is aggrieved of the judgment and decree rendered by the lower appellate court whereby the suit for declaration with consequential relief of permanent injunction to the effect that sehat mutation No.1648 dated 10.9.2003 qua the land comprised in Khewat No.295/238 Min Khata No.356 Rectangle No.50 Killa No.6/2 (0-13), 14(1-9) total 2 kittas (2k-2m) as per sale deed bearing No.1470 dated 30.8.2000 and mutation No.1542 Ex.P2 dated 15.10.2001 being illegal, void, nonest,

dispossession has been dismissed.

Mr.J.K.Verma learned counsel appearing for the plaintiff submits that the in the suit aforementioned, relief was sought that the plaintiff after making reasonable inquiries purchased land in dispute from Udaivir Singh vide Wasika No.1470 dated 30.8.2000 (Ex.P1), i.e., revenue record, jamabandi for the year 1995-96 Ex.P7 and 2000-01 Ex.P6. The aforementioned khasra numbers were shown to be entered in the name of Udaivir vide mutation No.963 dated 19.9.1993 Ex.D4. The trial court on the basis of the aforementioned evidence decreed the suit. The stand of the defendant was that they had become owner vide sale registered sale deed dated 1.10.1996 sold by Parveen Gupta. In fact, Parveen Gupta was not owner of the property as ownership was with Udaivir Singh. The defendant have failed to produce on record the additional evidence before the lower court in this regard which has also been dismissed and urges this Court for setting aside the impugned judgment and decree.

Per contra, Mr.Shailendra Jain learned senior counsel assisted by Ms.Mannu Chaudhary submits that Pradeep Katana as per jamabandi for the year 1990-91 Ex.D1 was owner in possession of land measuring 22K-5M comprised of following khasra numbers :

Rectangle No.49//10/2 (5-16), 12(8-0), 19(6-7), 50//6/2(0-13), 14(1-9)

The aforementioned land was sold by Pradeep Katana to Parveen Gupta vide sale deed dated 30.6.1993 Ex.D2. As per roznamcha No.565 dated 31.8.1993 Ex.D3, Parveen Gupta and Udavir Singh exchanged the following pieces of land : -

“49//10/2 (5-16), 12(8-0), 19 min east (5-17) 3 kittas

Total 19 Kanal 13 Marlas”

Udaivir Singh exchanged the following numbers having equal share:

1.	Khewat No.83/122 Jamabandi for the year 1985-86 Kitta 4 Area 17 Kanal 8 Marlas x 11/90 th share = 2 kanal 2 marlas
2.	Khewat No.82/121 Jamabandi for the year 1985-86 Kitta 2 Area 16 Kanal 0 marlas x 11/90 th share = 1 kanal 19 marlas
3.	Khewat No.87/126-127 Killa No.36/21/2 (1-8) x 1/2 th share = 0 kanal 14 marlas
4.	Khewat No.87 Killa No.37/16/2(4-0), 23/1(4-0) Kitta 2 Area – (8-0) x 15/160 th share = 0 kanal 15 marlas
5.	Khewat No.87 Killa No.36/22 (8-0), 23 (8-0) Kitta 2 Area – (16-0) x 80/320 th share = 4 Kanal 0 marlas
6.	Khewat No.166/234-235 Kitta 5 Area – (37-7) x 5513/548784 th share = 0 kanal 7 marlas
7.	Khewat No.167/236-241 Kitta 16 Area – (104-0) x 20/2080 th share = 1 kanal 0 marlas
8.	Khewat No.165/230-233 Kitta 14 Area – (106-0) x 5513/548784 th share = 1 kanal 1 marlas
9.	Khewat No.176/254 Kitta 7 Area – (29-8) x 1/2 th share = 2 kanal 9 marlas
10.	Khewat No.187/266 Kitta 3 Area – (16-10) x 320/990 th share = 5 Kanal 6 marlas
	19 Kanal 13 Marlas

The property in dispute, i.e., rectangle No.50 Killa No.6/2 measuring (0-13), 14(1-9) was not in the Roznamcha report No.565.

However, in the mutation baring No.963 dated 19.9.1993 entered into after

bearing rectangle No.50 was recorded in the name of Udaivir Singh. Vide registered sale deed No.2074 dated 1.10.1996 Ex.D9 sold the aforementioned piece of land to Shyam Sunder but Udaivir Singh taking advantage of the mutation bearing No.963 sold the land in favour of the appellant-plaintiff vide sale deed dated 30.8.2000. In this back drop of the matter, the application was moved to the revenue authority and corrected the sehat intekal vide mutation No.1648 of 10.9.2003 by carrying out the correction by mutating back the aforementioned khasra number having rectangle No.50 in favour of Parveen Gupta from Udaivir Singh and accordingly, mutation No.1681 dated 6.10.2004 Ex.D6 was entered in favour of the respondent-defendant. All these factors have been examined by the lower appellate court while reversing the findings. He urges that since Udaivir Singh was not having title or interest, therefore, mutation/jamabandi did not confer title, could not have been sold the land at best the appellant is entitled to claim damages in terms of money and urges this Court to affirm the findings.

I have heard the learned counsel for the parties and perused the paper-book. I am in agreement with Mr.Jain learned senior counsel submission and afraid to scribe to the view of Mr.Verma. From the comparison of the land exchanged between Udaivir Singh and Parveen Gupta, it was the same area i.e. 19K-13M. Rest of the land was never exchanged and this fact was reported in rapat No.565 dated 31.8.1993. A month thereafter as noticed in September, 1993, it was recorded that Udaivir Singh taking advantage sold the property whereas the same very piece bearing same khasra numbers had already been sold by Parveen Gupta in

favour of the plaintiff in 1996 and the said correction was made in Ex.D3 relating to entry in mutation of 1681 of 6.10.2004 Ex.D6. It is settled law that jamabandi and mutation does not confer title in the presence of the sale deed if at all the plaintiff was aggrieved of the sale deed having been disclosed in the written statement, he could have sought amendment of the plaint by seeking declaration and clarify the position on record. The contention of Mr.Verma raised while I was dictating, that defendant had also filed a suit which dismissed for non-prosecution. In the instant case, the parties were given ample opportunity to prove that Udaivir Singh was not owner of the Khasra No.50//6/2(0-13), 14(1-9) as part of Killa No.40 was acquired. In my view, the plaintiff did not seek declaration of the ownership in view of the sale deed dated 30.8.2000. In my view, the remedy for the appellant is to seek damages in accordance with law, if permissible.

The findings rendered by the lower appellate court are affirmed much less no substantial questions of law arises for consideration. Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 7, 2016

Paritosh Kumar

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No