

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

**RSA No.38 of 2016 (O&M)
Date of decision:22.09.2016**

Jarnail Singh and others

... Appellants

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.S.Dinarpur, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellant-plaintiffs are aggrieved of the dismissal of the suit seeking declaration of the joint owners in possession of the land measuring 160 kanals 10 marlas being 6420/22090 share out of total land measuring 552 kanals 5 marlas as detailed in the decree sheet, situated within the revenue estate of village Chabutaron, HB No.332, Tehsil Jagadhri, District Yamuna Nagar as per the jamabandi for the year 2001-02 with a consequential relief of permanent injunction seeking restraint order against defendants No.1 to 3 from alienating the land measuring 17 kanals 2 marlas bearing khasra no.22//23 (8-0), 25//3, (8-0), 25//8/1 (1-2), situated within the revenue estate of village Chabutaron.

Mr. S.S.Dinarpur, learned counsel appearing on behalf of the appellant-plaintiffs submits that both the Courts below have committed illegality and perversity, much less, miserably failed to notice the fact that there is no evidence on record to prove that the property at any point of

time, defence taken in the written statement, was declared surplus, except mutation of 1985, whereas, the plaintiffs have purchased the suit property, vide sale deed dated 25.06.2002. He further submits that the land measuring 17 kanals 2 marlas as per the description given above is owned by the plaintiffs and the possession was also handed over to them at the time of execution of the sale deed. The mutation bearing No.207 was sanctioned in the name of the plaintiffs. Since the plaintiffs wanted to raise loan from the bank, for which they contacted the Halqa Patwari for the obtaining the jamabandi of the land and it was told that the land was standing in the name of State of Haryana and the same will be auctioned/allotted. In this background of the matter, the suit aforementioned was filed. In fact, the mutation of 1985 was effected at the back of the erstwhile owners, much less, no notice was given. He further submits that as per Ex.D1, there is no order on record declaring the land surplus.

The vendors of the plaintiffs were/are lawful owners of the property and the land had never been declared surplus by the revenue department. All these factors have not been noticed by both the Courts below and thus, urges this Court for setting aside the findings under challenge.

I have heard learned counsel for the appellant-plaintiffs and appraised the judgments and decrees of the Courts below and of the view that the principle of “Buyer Beware” is universal. The person, who has to buy the land, has to see the revenue record. From the averments made in the plaint, it is discernible that the appellants had purchased the property

without verifying the revenue record. They acquired the knowledge only when they wanted to raise loan and contacted Halqa Patwari.

It is conceded position on record that no inquiry was made. Once the land had already been declared surplus, the erstwhile vendor of the plaintiffs did not have the saleable right or title in the property and therefore, the declaration seeking ownership has rightly been declined. At the best, the appellants are entitled to seek damages against the erstwhile owners. The mutation Ex.D5, connects the khasra numbers mentioned in the sale deed.

In my view, once the factum of land having declared surplus as stated in the written statement, nothing prevented the appellant-plaintiffs to summon the record from the concerned authority by leading the evidence in affirmative to prove the case of non-compliance of principle of natural justice and to overcome the hurdle of the same.

Having failed to do any inquiry, I am of the view that suit was ploy to obtain the stamp of the Court vis-a-vis declaration of the land which never belongs to erstwhile owners. No evidence has been led by the plaintiffs to belie the stand of the defendants regarding the surplus land, i.e., contrary to the mutation Ex.D5 which carries a presumption of truth under Section 44 of the Punjab Land Revenue Act.

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

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 22, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No