

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

RSA No. 5335 of 2014 (O&M)

Date of decision: 06.04.2016

Bhagmal and another

...Appellant(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Rakesh Dhiman, Advocate,
for the appellant(s).

Mr. Saurabh Mohanta, DAG, Haryana.

JITENDRA CHAUHAN, J.

This regular second appeal has been filed by the plaintiffs against the judgment and decree dated 14.07.2014, passed by the District Judge, Gurgaon vide which the appeal filed by the defendants was allowed; the judgment and decree dated 19.11.2013, passed by Civil Judge (Junior Division) Gurgaon was set aside and the suit of the plaintiffs was dismissed.

In brief, the plaintiffs filed suit for declaration to the effect that the plaintiffs are entitled to be recorded as owners in possession of the suit land in the revenue record by way of mutation as detailed in Para No. 1 of the plaint. The plaintiffs also

sought a decree of mandatory injunction directing the defendants to enter and sanction mutation in respect of the suit land on the basis of sale deed No. 3399 dated 24.07.1993 in favour of the plaintiffs.

The brief facts of the case are that plaintiffs are owners in possession of the land comprising Rect. No. 131, Kila No. 6 (7-9) Rect. No. 130, Killa No. 10 (0-11) western side, total measuring 8 kanals, situated in village Kasan, Tehsil and Distt. Gurgaon. It is further submitted that the plaintiffs vide sale deed No. 3399 dated 24.07.1993 purchased 160/529 share out of the land comprising Khewat No. 1300 Khata No. 1599 Rect No. 130, Killa No. 1/2 (4-4), 2 (4-4), 9(3-0), 10(7-12), Rect No. 131, Killa No. 6 (7-9) total measuring 26 kanals 9 marlas. After purchase of the above mentioned land, the plaintiffs constructed their house over the same and had been been residing in that house. The plaintiffs have duly applied several times to the defendants for entering and sanctioning the mutation on the basis of the said sale deed in their favour, but the mutation has not been entered and sanctioned till date. No reason has been communicated to the plaintiffs for non-sanctioning of mutation on the basis of the above mentioned sale deed in favour of the plaintiffs. Hence the suit.

Upon notice, the defendants appeared and filed written statement. It was pleaded by the defendants that the plaintiffs had

purchased certain parcels of land from various vendors but the vendors did not have specified share in the suit land and the share of the vendors was not fixed as yet as the land is shamlat patti land and each and every resident of the village has right in the suit land.

After appraisal of evidence, the learned trial Court decreed the suit. It was observed by the trial Court that since the plaintiffs have purchased the land vide sale deed no. 3399 dated 24.07.1993, they had every right to get the land mutated in their favour.

Feeling dissatisfied, the defendants filed an appeal before the lower Appellate Court. The lower Appellate Court vide judgment and decree dated 14.07.2014, allowed the appeal and set aside the findings recorded by the trial Court. The suit of the plaintiff was dismissed. Consequently, the present regular second appeal at the behest of the plaintiffs.

It is contended on behalf of the the appellants that since the plaintiff/appellants have purchased the suit land from different vendors so they have every right to get the land mutated in their favour. It is further contended that the learned trial Court has rightly decreed the suit of the plaintiff. The findings recorded by the lower Appellate Court are against the law.

I have heard learned counsel for the parties and gone through the case file.

The plaintiffs are seeking declaratory decree that they be recorded as owners in possession of the suit land. They also sought direction to the defendants to enter and sanction mutation in their favour in respect of the suit land. The learned lower Appellate Court observed that the share of the plaintiffs is not specified because the vendors of the plaintiffs did not have fixed share. Admittedly, the suit land is “shamlat patti”. As per the judgment of Hon'ble Full bench of this Court rendered in ***“Jai Singh and others Vs. State of Haryana 2003 PLR 658”***, each and every resident of the village has right in the “shamlat patti” land as the same was left for common purposes and as such the mutation could not be sanctioned in favour of the plaintiffs. Till the time, the partition is effected between the parties, the plaintiffs cannot seek declaration of their specified share. This Court does not find any reason to differ with the view taken by the lower Appellate Court. There is no flaw in the judgment and decree dated 14.7.2014 passed by the lower Appellate Court. No substantial question of law arises for consideration. Consequently, the present appeal is dismissed and the judgment and decree dated 14.7.2014, passed by the lower Appellate Court is upheld.

06.04.2016
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(JITENDRA CHAUHAN)
JUDGE