

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

RSA No.5379 of 2016 (O&M)

Date of decision : 12.09.2017

Amrik Singh @ Jasbir Singh

...Appellant

Versus

Jasvir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Paramjit Batta, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.5 is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff had filed a suit for rectification of the sale deed dated 24.04.1973 asserting that his father name has been wrongly mentioned as Gurdev Singh whereas his actual and correct name is Baldev Singh.

On the other hand, defendant who is cousin of the plaintiff pleaded that he is also known as Amrik Singh @ Jasvir Singh and he is son of Gurdev Singh, therefore, he is actual purchaser.

Learned trial Court after appreciating the evidence available on the file decreed the suit filed by the plaintiff. The Court noticed that defendant No.5-appellant has failed to produce any evidence on record to prove that he is known by two names namely Amrik Singh and Jasvir Singh.

First appeal was preferred. Learned First Appellate Court after

re-appreciating the evidence available on the file upheld the findings of fact arrived at by the trial Court.

Learned counsel for the appellant has argued that the suit was barred by limitation as plaintiff had filed a suit for rectification after a period of 38 years, therefore, the Courts have erred in decreeing the suit. He has referred to Article 113 of the Limitation Act to assert that since rectification of document is not provided in the Schedule attached to the Limitation Act, 1963, therefore, the limitation has to be taken as three years from the registration of instrument-sale deed. He has further submitted that the suit filed by the plaintiff was barred under Order 2 Rule 2 CPC as the plaintiff had earlier filed a suit for correction of khasra girdawri whereas the plaintiff at that time was entitled to seek rectification. He has further submitted that in a suit for rectification, the evidence of scribe of the document is necessary and since scribe has not been examined, therefore, rectification could not be ordered.

I have heard learned counsel for the appellant at length and with his able assistance gone through the record of the case.

As noticed above, the suit is only for rectification of the name of the father in the sale deed and consequential error in the revenue record. As per the Schedule attached to the Limitation Act, 1963, no limitation is provided for rectification. Rectification of instrument is governed by Section 26 of the Specific Relief Act in which no limitation has been provided. In my considered opinion, learned counsel for the appellant is not right in asserting that such suit should be governed by Article 113 of the Schedule attached to the Limitation Act, 1963. For rectification of errors

which are inadvertent or result of mutual mistake of the parties, bar of limitation cannot be invoked.

It has been concurrently found by the Courts that the appellant has failed to lead any evidence on record to prove that he was also known as Jasvir Singh. I repeatedly called upon learned counsel for the appellant to produce any evidence, however, he was unable to produce any evidence on the file. Albel Singh, the grandfather had only an grandson in the name of Jasvir Singh. He purchased the property in the name of Jasvir Singh way back in the year 1973. By mistake the name of father was wrongly mentioned which is now sought to be corrected. Defendant No.5-appellant has taken a false plea that he is also known as Jasvir Singh, although he failed to substantiate by any evidence. The entire effort was to grab the property of Jasvir Singh.

Next argument of learned counsel is that the suit is barred under Order 2 Rule 2 CPC. Learned counsel for the appellant has frankly admitted that the plaint filed in the earlier suit has not been filed in this suit. In the absence of the plaint, it is not possible to conclude that the present suit is barred under Order 2 Rule 2 CPC. Before a finding on Order 2 Rule 2 CPC is given, it is necessary to examine that whether earlier suit was on the same cause of action or not.

Still further, defendants did not claim any issue on Order 2 Rule 2 CPC. In these circumstances, there is no force in the submission of learned counsel for the appellant.

Next argument of learned counsel for the appellant is that the intention of the scribe is to be seen. Unless the scribe has been examined,

the rectification cannot be ordered.

I have examine the contention. However, I do not find any force in the same. It is a case of mistake and rather it is a mistake which is of clerical in nature. Such mistake is required to be corrected by the authorities even *suo motu*.

In view of what has been discussed above, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Regular Second Appeal is dismissed.

12.09.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No