

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

RSA No.4234 of 2017 (O&M)

Date of Decision : 13.09.2017

Sewa Singh

....Appellant

versus

Taranjit Singh and Ors.

....Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Ramandeep Singh Pandher, Advocate
for the appellant.

Mr. Narinder Kumar Vadehra, Advocate
for the Caveator.

RAJBIR SEHRAWAT, JUDGE (ORAL)

This is an appeal filed by defendant against the judgement of the reversal. In nutshell facts of this case are that the respondent herein filed a suit claiming that defendant No.1, Sewa Singh, was owner of land measuring 3 Kanal 1 Marla comprised in Rect. No.86//7/2/2 (1-8) and Killa No.13 (1-13) situated at village Sunet, Tehsil and District Ludhiana. Defendant No.1 had appointed defendant No.2 as his General Power of Attorney vide registered deed dated 22.03.1982. The General Power of Attorney holder sold the land measuring 200 sq.yards out of Rect.No.86///7/2/2 vide sale deed No.17412 dated 22.03.1982 for a consideration of Rs.15,000/-. It is his specific plea that the property was sold to him with the dimensions and boundaries mentioned in the sale deed. Even the site plan was got registered mentioning the boundaries of the suit property along with the sale deed. In the plaint, he has mentioned the boundaries as mentioned in the sale deed. However, it has been explained in the plaint that subsequently the boundaries of suit land has changed as mentioned in Para-2 of the plaint. It is further, claimed by the plaintiff that he has got the possession of the land on the date of registration of sale deed.

It has further been pleaded that on the date of sale deed the General Power of Attorney holder of defendant No.1 had sold other parts of land also to some other persons. The plaintiff was enjoying his property. However, in the year 1996 the defendants started claiming that the property purchased by the plaintiff is the different property than the one of which he has got possession. Therefore, the defendants started threatening the possession of the plaintiff. Hence, the present suit for declaration that he is the owner in possession of the suit property with the boundaries mentioned in the plaint.

Notice of the suit was given to the defendants. Defendant No.1 Sewa Singh had expired, thereafter his LRs filed their written statement in the suit. It was pleaded by them that the land sold to the plaintiff was in khasra No.86//7/2/2, as mentioned in the sale deed, and not in khasra No.86//13 where the plaintiff has taken possession. It was further,pleaded by them that Sewa Singh never appointed defendant No.2 as power of attorney in respect of land comprised in 86//13. Therefore, even the General Power of Attorney holder could not have sold the land comprised in khasra No.86//13. Even the sale in favour of plaintiff was denied by the defendants.

The parties led their evidence. After appreciating the evidence the learned trial court dismissed the suit filed by the plaintiff-respondent on the ground that the plaintiff could not have claimed the property comprised in khasra number other than the one mentioned in his sale deed. It was further recorded by the trail Court that the power of attorney holder had no authority to sell the property in khasra No.86//13.

Aggrieved of these findings the plaintiff/respondent herein

filed an appeal before the Additional District Judge, Ludhiana. The lower Appellate Court vide the judgement and decree dated 06.02.2017 allowed the appeal and decreed the suit filed by the plaintiff. While decreeing the suit the lower Appellate Court recorded finding that the khasra No.86//13 is duly mentioned in the power of attorney executed in favour of defendant No.2. Therefore, defendant No.2 had every authority to sell the property situated in khasra No.86//13. It is further held by the lower Appellate Court that since the boundaries of the properties are mentioned in sole deed and the boundaries tally with the property in Khasra No.86//13 and not with the property comprised in Khasra No.86//7/2/2, therefore, the intention of the parties to the sale deed is quite clear that it was the property situated in khasra No.86//13 which was intended to be sold to the plaintiff. To support this conclusion the lower Appellate Court has also relied upon the judgement of the Hon'ble Supreme Court titled as ***Shoedhyan singh and Others vs. Mst. Sanichara Kuer and Others AIR 1963 SC 1879.***

Learned counsel appearing for the appellant while arguing the case has submitted that Section 26 of the Specific Relief Act specifically provides that in case there is a mistake in the deed then either party may instituted the suit to have the instrument rectified. Therefore, learned counsel for the appellant submits that the plaintiff had every opportunity to seek rectification of the sale deed to get the khasra number in the sale deed corrected. However, he has chosen not to file the suit for that purpose. Instead, he has filed the suit for declaration. The second contention of the learned counsel for the appellant is that sale deed is of the year 1982. The plaintiff while appearing as a witness has admitted that he was read over the

sale deed. Therefore, according to the counsel for the appellant, the plaintiff knew from the beginning that there is mistake in the sale deed. Therefore, he should have filed the suit immediately. However, he has filed the suit much later, which is time barred.

Counsel for the caveator-respondent has submitted that although the khasra number of the property is wrongly mentioned in the sale deed but the intention of the parties is quite clear as to what was the property sold through that sale deed. Since the plaintiff have been in possession of the suit property and enjoying it since long without any disturbance, therefore, he had no reason to believe it otherwise that this was not the property sold to him. Secondly it is the submission of the learned counsel for the respondent that Sewa Singh expired much later after execution of the sale deed. Had this property not been sold to the plaintiff, then Sewa Singh would have challenged the sale deed in favour of the plaintiff or his possession, and the LRs have no right to challenge the deed executed by Sewa Singh.

I have heard learned counsel for the parties and perused the record.

It is a matter of fact that in the sale deed the khasra number mentioned to have been sold to the plaintiff is 86//7/2/2. However, the boundaries mentioned in the sale deed and the site plan attached with it make it clear that this was not the intention of the parties to the deed to sell the land in this khasra number. Rather, it was the intention of the parties to sell the property bounded by the boundaries mentioned in the sale deed and clarified by the site plan attached with the sale deed.

In view of this situation, the plaintiff has filed the present suit claiming declaration that the property sold to him in fact was the property which is bounded as mentioned in the plaint and mentioning of the wrong khasra number was only a mistake. The action of the plaintiff is maintainable and he can definitely file this civil suit, as has been held by the Hon'ble Supreme Court in the case of *Shoedhyan singh and Others(supra)*. So there is no illegality in filing the suit for declaration as such.

Even the reading of Section 26 of the Specific Relief Act makes it clear that the plaintiff, in any suit in which the right arising under the instrument is in issue, can claim in the pleading that the instrument be rectified. In the present case also the plaintiff has come in the suit claiming the particular boundaries to have been sold to him instead of the khasra number mentioned in the sale deed. Therefore, in effect, he is seeking the rectification of khasra number only. Not only this, Section 26 sub-Section 2 also gives a discretion to the Court that in case, a suit is filed for rectification under Sub Section (1) then the Court is authorised to assess the intention of the parties and if the intention of the parties has been in favour of the rectification of the mistake then, it can order the rectification of the mistake subject to the condition that no prejudice is caused to the rights acquired by the third party. In the present case no third party rights are involved. Therefore, there is nothing wrong with the finding recorded by the lower Appellate court.

One more argument raised by the learned counsel for the appellant is that Sub Section (4) of Section 26 prohibits grant of relief of rectification to a party unless it is specifically claimed by the party.

However, as mentioned above, the judgement of the Hon'ble Supreme Court is clarifying only this position that even if it is not specifically claimed but is otherwise clear from the claim in suit based on the boundaries, then the Court can grant the relief to the plaintiff, having the effect of the rectification of the mistake. Therefore, this contention of the learned counsel for the appellant has also to be rejected.

So far as the dispute regarding boundaries is concerned, even the defendant's witness has admitted the boundaries which have been sold to the plaintiff. Even the witness of the defendant-appellant herein, DW5 i.e. Ram Singh, has admitted that on the spot verification it was found that the property sold to the plaintiff, as per the boundaries, is found to be situated in khasra No.86//13 and not in khasra No.86//7/2/2. Therefore, after doing this exercise and finding the exact location of the properties sold to the plaintiff, the Court has rightly granted the relief of declaration in favour of the plaintiff because this was the intention of the agreement entered into between the parties.

So far as to the plea regarding limitation is concerned, this argument of the learned counsel for the appellant is not sustainable. The plaintiff was never disturbed qua his possession. Therefore, he has no reason or occasion to believe that he had been sold the property other than the one with the boundaries mentioned in the sale deed. Counsel for the respondent has also referred to the sale deed wherein, it has been written that the intention of the deed is to sell the property with the boundaries mentioned in the sale deed. Therefore, the plaintiff would have a cause of action only when this intention, as expressed in the sale deed, is disputed by

the defendant. As is clear from the facts, pleaded by the plaintiff and proved on record, that the threat was raised by the defendants only in the year 1996 on the ground of the said mistake in the sale deed. Thereafter, the suit has been filed by the present plaintiff in the year 1996 itself. Therefore, the suit is not barred by limitation. Hence, there is nothing wrong in the findings recorded by the learned Appellate Court on this point as well.

In view of the above findings, there is no illegality or perversity in the findings recorded by the lower Appellate Court and the judgement and decree passed by the lower Appellate Court are upheld.

In view of the above, the present appeal fails and is dismissed being devoid of any merits.

13th September, 2017

Manju

**(RAJBIR SEHRAWAT)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No