

RSA No.2944 of 1994

{1}

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

RSA No.2944 of 1994

Date of decision:24.01.2018

Rajinder Singh and others

... Appellants

Vs.

Sher Singh and others

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Atul Lakhanpal, Senior Advocate with
Mr. R.S.Chahal, Advocate
for the appellants.

Mr. Amit Jain, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The appellant-defendants are in Regular Second Appeal against the concurrent findings of facts and law, whereby, the suit filed by the respondent-plaintiffs claiming declaration by way of challenging the mutation No.2590 dated 02.07.1991 and sale deed dated 29.10.1982 in favour of defendants No.1 to 3, being valid to the extent of 3 marlas of land, has been decreed by both the Courts below, with a further prayer of injunction in favour of the plaintiffs in respect of the land measuring 43 marlas purchased vide sale deed dated 20.05.1978, Ex.P4.

Mr.Atul Lakhanpal, learned Senior counsel assisted by Mr. R.S.Chahal, Advocate appearing on behalf of the appellant-defendants submitted that both the Courts below have gravely erred in ignoring the provisions of Section 41 of Transfer of Property Act, 1882 (in short “1882 Act”) as the appellants were the bonafide purchasers of the land. The Courts

below have misread the facts and caused the miscarriage of justice. It was admitted case of respondents-plaintiffs that plaintiff/respondent No.1, vide sale deed dated 29.10.1982 (Ex.P-2), had sold 10 marlas of land, to the appellants for a consideration. The case set up by them was that respondent no.1/plaintiff purchased 10 marlas of land from defendant/respondent no.4-Brij Lal, i.e. 10/454 share in khasra no.321. But it transpired that Brij Lal was owner of 3 marlas of land and it is in this background of the matter, the Assistant Collector IInd Grade rejected mutation on 20.07.1989. All these factors have not been taken into consideration by the Courts below, thus, there is illegality and perversity in the findings as following substantial questions of law arise for adjudication of the present appeal which read as under:-

“i) Whether the suit for declaration in the absence of consequential relief of injunction was maintainable or not?

(ii) Whether the sale deed dated 29.10.1982 would be void or not?”

Per contra, Mr. Amit Jain, learned counsel appearing on behalf of the respondent-plaintiffs submitted that Ami Chand out of khasra no.321 had sold the land measuring 43 marlas, vide sale deed dated 20.05. 1978 (Ex.P4) to all the plaintiffs and proforma defendant No.5. Later on defendant no.4-Brij Lal sold the land measuring 10 marlas to plaintiff no.1-Sher Singh, vide sale deed dated 23.04.1981 (Ex.P1). Sher Singh, plaintiff no.1, vide sale deed dated 29.10.1982 (Ex.P2), sold 10 marlas of land to defendants No.1 to 3. The defendants filed an application before the revenue

authorities for sanctioning of the mutation but it came to the light Brij Lal did not have title of 10 marlas of land except 3 marlas. Accordingly, an application seeking sanctioning of mutation of 10 marlas of land was rejected on 20.07.1989. However, the defendants at the back of the plaintiffs got the mutation of 10 marlas vide mutation bearing No.2590 dated 2.07.1991 by adding 7 marlas of land belonging to plaintiff no.1. Owing to the fact that only the Civil Court would have jurisdiction, therefore, the cause of action arose to file the suit for declaration.

The evidence brought on record before the Court below clinched the issue that Brij Lal did not have the ownership of land more than 3 marlas, therefore, claimed the declaration that the sale deed dated 29.10.1982 was only in respect of 3 marlas of land instead of 10 marlas. He, thus, urged this Court that concurrent findings cannot be tinkered with until and unless, there is gross illegality and perversity.

I have heard the learned counsel for the parties, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Lakhanpal.

The facts noticed above are not controverted by learned counsel for the parties. Concededly, Brij Lal did not have the ownership of land measuring 10 marlas yet he sold the land branding himself to be owner of 10 marlas of the land, vide sale deed dated 23.04.1981 (Ex.P1) to plaintiff no.1 and believing the representation of Brij Lal, respondent no.1-Sher Singh sold the same to appellant-defendants, vide sale deed dated 29.10.1982 (Ex.P-2) but the factum of exact ownership of the land at the

hands of Brij Lal acquired when the application moved by the defendants for sanctioning of the mutation *vis-a-vis* 10 marlas of land was rejected on 20.07.1989.

In my view, the defendants have not been able to prove that in what manner the impugned mutation bearing No.2590 dated 02.07.1991 in respect of 10 marlas of land by adding 7 marlas of land belonging to plaintiff no.1 was sanctioned when plaintiff no.1 had not sold the land as it did not tally with the particulars of land referred to in the sale deed. At the best, both the parties had independent remedy claiming damages. Even otherwise, in the absence of any counter claim or independent suit set up by the appellant-defendants claiming declaration on the basis of sale deed dated 29.10.1982 for making up the deficiency of the land, the aforementioned mutation could not have been sanctioned as this can be done only by way of registered document or by way of decree. This is what weighed in the mind of the Courts below while decreeing the suit.

As an upshot of my findings, I am of the view that the concurrent findings of facts and law do not warrant any interference, much less, no substantial questions of law as projected do not arise for adjudication of the present appeal.

No other point has been argued.

Accordingly, the appeal stands dismissed.

January 24, 2018

savita

Whether Speaking/Reasoned

Whether Reportable

**(AMIT RAWAL)
JUDGE**

Yes/No

Yes/No