

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.1565 of 1995

Date of Decision.02.04.2018

Jagdish Chand and another

.....Appellants

Vs

Rugli (since deceased) through LRs & others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kulbhushan Sharma, Advocate
for the appellants.

Mr. A.P. Bhandari, Advocate
for respondent Nos.1, 2 and 4.

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AMIT RAWAL J.(ORAL)

The legal representatives of defendant No.1 Hardayal Singh are in regular second appeal against the concurrent finding of fact whereby the suit of the respondents-plaintiffs claiming declaration with consequential relief of permanent injunction has been decreed by the trial Court vide judgment and decree dated 11.09.1990 and the appeal preferred against the same before the lower Appellate Court has also been dismissed.

It would be necessary to give certain facts emanated from the pleadings of the parties. The respondents-plaintiffs instituted the suit for declaration claiming themselves to be owner in possession of the land measuring 14 marls as described in para 1 of the plaint with consequential relief of permanent injunction restraining the appellant-defendant No.1 from interfering into the peaceful possession over the suit land on the ground that the plaintiff No.1 Rugli and Devi Chand got the suit land in exchange from Chunni son of Sabha Ram, father of defendant Nos.2 to 4. Mutation bearing No.726 of exchange was sanctioned on 11.2.1960 in favour of plaintiff No.1 Rugli and Devi Chand (since deceased).

challenging the locus standi of the plaintiffs and institution of the suit to be based upon suppression of material facts. Plaintiff No.2 and 8 have no concern with Devi Chand and defendant No.1 is the only successor-in-interest of the owners of the suit land i.e. Rugli and Devi Chand, who had died issueless.

Defendant No.2 to 4 i.e. Shiv Charan, Radha Kishan and Umrao sons of Chunni had filed the written statement admitting the claim of the plaintiffs.

The trial Court on the basis of the aforementioned pleadings, framed the following issues:-

- “1. Whether the plaintiffs are owners in possession of suit land as mentioned in para No.1 of the plaint as alleged? OPP*
- 2. Whether the Rugli and Devi Chand got the suit land in exchange from Chunni son of Sobha Ram vide mutation No.726 dated 11.2.1960 as alleged? OPP*
- 3. Whether defendant No.1 is bent upon to dispossess the plaintiff from the suit land as alleged? OPP*
- 4. Whether the plaintiffs have no locus standi to file this suit? OPD*
- 5. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 6. Whether the plaintiffs have suppressed the material facts in the plaint as alleged? OPD*
- 7. Whether the suit of the plaintiff is mala fide, false and frivolous? OPD*
- 8. Relief.”*

On the basis of both oral and documentary evidence brought on

record the trial Court decreed the suit by holding that exchange was reflected in the revenue record and therefore, granted declaration and injunction by restraining the defendants from interfering into the peaceful possession of the plaintiffs. The appeal preferred against the same was also dismissed as indicated above.

Mr. Kulbhushan Sharma, learned counsel appearing on behalf of the appellants submitted that both the Courts below have committed illegality and perversity in decreeing the suit, for, the evidence brought on record did not show that the exchange was actually acted upon. Mutation bearing No.1453 and 1454 dated 12.8.1988 (Ex. P11 & P12) of inheritance of Devi Chand correctly showed the transfer of ownership of 3/4th share of Sagli, after his death, in favour of Hardayal Singh, which were binding upon the respondents/plaintiffs. The Courts below have wrongly held that the respondents-plaintiffs are owners in possession of 14 marlas of land comprising of khasra No.112 whereas the appellants are owners in possession of this land, therefore, there is abdication and illegality.

Mr. A.P. Bhandari, learned counsel appearing on behalf of respondent No.1, 2 and 4 submitted that the concurrent finding of fact cannot be interfered with unless and until there is gross illegality and perversity. The evidence brought on record clearly revealed that the mutation in favour of defendant No.1 in respect of suit land on death of Sagli could not have been sanctioned. The entries of both mutations No.1453 and 1454 (Ex.P11 and P12) were not binding upon the rights of the plaintiffs as Rugli was owner in possession of half share in the suit land measuring 14 marlas comprising khasra No.112, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper

Mr. Kulbhushan Sharma, for, the claim of the plaintiffs was simple and plain. They had claimed declaration of ownership with permanent injunction on the premise that there was an exchange of the suit property. Both the parties had brought on record evidence. A perusal of the jamabandi for the year 1954-55 (Ex.P10) revealed that Rugli was the owner of the suit land measuring 14 kanals comprising of khasra No.112 whereas the mutation bearing No.726 was sanctioned on 11.2.1960 (Ex.P1). The aforementioned mutation revealed that land in question was in ownership of Devi Chand son of Umrao son of Bhima and Rugli son of Umrao son of Bhima, in equal shares as they exchanged this land with some other land to Chunni son of Shoba Ram. Defendant No.2 to 4 also acknowledged the aforementioned fact by admitting the claim of the plaintiffs. The entries on the basis of mutation No.726 were made in the jamabandi for the year 1959-60 (Ex.P2), which reflected the factum of exchange and continued till 1983-84 (Ex.D1). The half share of Devi Chand out of land measuring 14 marals was mutated in favour of Shagli and Hardayal son of Umrao and in the mutation Devi Chand was shown to have died issueless, which has been rebutted through the testimony of Jagdish son of Hardayal as DW1.

All these facts weighed in the mind of both the Courts below. I do not find any illegality and perversity in the judgments and decrees rendered by both the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 02, 2018
Pankaj*