

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

**RSA No.4079 of 2008 (O&M)
Date of Order: 25.05.2018**

Ram Mehar and others

..Appellants

Versus

Sajjani Devi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashwani Bakshi, Advocate,
for the appellants.

Mr. S.P.Chahar, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Defendants-appellants No.3 to 5 who are in the regular second appeal against the concurrent findings of fact arrived at by the courts below, decreeing the suit filed by the plaintiff-Mange Ram for declaration and permanent injunction claiming that they are owners in possession.

The main grievance of learned counsel for the appellants is that the learned first appellate court has dismissed the application for additional evidence in which prayer was made to produce on record documents which are of unimpeachable credence. He submitted that the first appellate court has gone into the technicalities rather than doing substantive justice between the parties.

Although, learned counsel for the respondents has vehemently contested consideration of the additional evidence, however, in order to do

justice between the parties, this court is of the opinion that technicalities should be kept apart while doing substantive justice between the parties.

Hence, application for additional evidence filed by the defendants-appellants and the counter evidence produced by the respondents-plaintiffs are exhibited on record.

Plaintiffs claim that Baldeva-defendant no.2 was owner of 4 kanals and 7 marlas of land and out of that, 4 kanals was exchanged with plaintiffs on 16.02.1992. In Haryana, oral exchange is permissible. The oral exchange was reflected in the revenue record vide mutation dated 10.03.1992, Ex.P4 on the record. Thereafter, the plaintiff purchased vide sale deed dated 26.03.1992, 4 kanals of land given to Baldeva in exchange and mutation thereof has been sanctioned. Defendants-appellants have purchased the land from Baldeva-defendant No.2 vide sale deed dated 16.04.1992. It is the case of the plaintiffs that on the day Baldeva sold 4 kanals of land to defendants no.3 to 5-appellants, Baldeva was not owner of 4 kanals and in fact he was owner of 7 marlas of land only.

In view of what has been stated above, the judgments passed by the courts below on merits do not require interference. Only error committed by the learned first appellate court while dismissing an application for additional evidence has already been reversed and additional evidence produced by the defendants-appellants as well as counter evidence produced by the plaintiffs-respondents has been taken into consideration. Even after consideration of the additional evidence produced by both the parties, result remains the same.

Needless to say that defendants-appellants no.3 to 5 shall be entitled to 7 marlas of land which was owned by Baldeva and the

defendants-appellants shall also be entitled to take appropriate steps in accordance with law.

The regular second appeal stands disposed of.

May 25, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No