

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

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**RSA No.3300 of 2012 (O&M)
Date of Decision : 30.01.2018**

Jasmer Kaur and others

..... Appellants

Versus

Krishan Lal and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Sherry K.Singla, Advocate
for the appellants.

Mr. Vijay Sharma, Advocate
for the respondents.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below dismissing a suit filed by the appellants for claiming that they are the owners of Khasra No.303 (0 k-10 m) and Khasra No.341 (0 k-4 m) situated at Village Daun Kalan Tehsil & District Patiala on the ground that their father had purchased it in the year 2003 from Isher Singh their grand father. The respondents appeared and disputed the claim of the appellants over the Khasra No.303 (0 k-10 m) and as regards Khasra No.341 (0 k-4 m) it was their stand that they had no connection with the land in dispute. With regard to the disputed Khasra No.303 (0 k-10 m) the stand of the respondents was that infact Isher Singh-grand father of the appellants had sold 5 marlas each to one Mara and his wife Baabi by two sale deeds of 1962. Subsequently Mara and Baabi had exchanged the land

with the respondents in 1962 and since then the respondents were residing in that piece of land after constructing their house and consequently also pleaded that in the alternative they had become owners by way of adverse possession. A handwriting expert was examined by the respondents who testified that the thumb impression on the two sale deeds of 1962 matched with the thumb impression of Isher Singh. The son of Mara and Baabi also appeared and testified that in fact his parents had purchased the land by two sale deeds from Isher Singh and that thereafter that land had been exchanged with the respondents. On the strength of these arguments and these facts the Courts below dismissed the suit of the appellants.

Learned counsel for the appellants has argued that in order to dis-lodge the sale deed in favour of the appellants it was incumbent upon the respondents to have satisfactorily prove the sale deed in favour of Mara and Baabi. Moreover since the mutation of the land had been entered in favour of the appellants, it was incumbent upon the respondents to have challenged the sale deed in their favour and the respondents had not proved exchange in their favour with Mara and Baabi. The third argument is that atleast qua Khasra No.341 (0 k-4 m), once the respondents had averred that they had no connection with the same the suit should have been decreed.

In my opinion the argument must fail. The sale deeds of 1962 have been duly proved on the standard of preponderance of probability by the examination of the hand writing expert and by the assertion of the LRs of Mara and Baabi. No evidence was led by the appellants to suggest that the thumb impression appearing on the sale deeds of 1962 were not those of Isher Singh. As regards the argument that it was incumbent upon the

respondents to have challenged the sale deed in favour of the appellants

this argument also can not be accepted. Once the respondents were claiming title and sitting in their own house they did not have to challenge any subsequent transfer by their vendor and once the sale deeds of 1962 were proved the case of the appellants was displaced and there would be no requirement for the respondents to further prove the oral exchange which was otherwise accepted by the LRs of Mara and Baabi.

Appeal is dismissed qua the land mentioned in Khasra No.303 (0 k-10 m). However with respect to the land measuring in Khasra No.341 (0 k-4 m) learned counsel for the respondents has stated that there was no bar in view of the fact that the land in Khasra No.341 (0 k-4 m) stood in the name of Isher Singh and the respondents have no connection with the same. The suit qua that is decreed qua the respondents.

Appeal is disposed of in the above terms.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

30.01.2018

Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No