

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.4372 of 2012 (O&M)

Date of Decision:15.05.2018

Ram Pat and others

...Appellants

Versus

Hawa Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Pritam Saini, Advocate for the appellants.
Mr.Ajay Jain, Advocate for respondents No.1 to 3.
Mr.Shailendra Jain, Sr. Advocate with
Mr.Satyendra Chauhan, Advocate for respondent No.4.

ANIL KSHETARPAL, J. (ORAL)

The plaintiffs-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

The plaintiffs filed a suit for declaration and possession of land measuring 4 kanals and 13 marlas and also prayed for decree of permanent injunction. Originally the property was owned by one Jharia. Thereafter this property was succeeded by his two sons Budha and Shiria.

It is the case of the plaintiffs that their predecessor was taken to Patwari (Revenue official) and certain thumb impressions were obtained, which were in token of exchange, although no exchange took place.

On the other hand, the defendants have pleaded that two brothers, i.e. Budha and Shiria had orally partitioned the land. Budha was given 24 kanal and 19 marla of land, which was two kilometers away from the village, whereas Shiria got 25 kanal and 13 marla of land. Thereafter, there was once again a family settlement, wherein Budha and Shiria

exchanged their properties. Apart from the land measuring 25 kanal and 13 marla, Budha was also given two residential houses in abadi. Rapat Roznamcha (entry in the diary of the revenue official) with regard to the aforesaid exchange was duly entered at Sr.No.235 dated 28.5.1985. Both the parties had signed that Rapat Roznamcha. Pursuant thereto, the Assistant Collector, 2nd Grade, passed an order and sanctioned the mutation of exchange.

The learned first appellate court has also noticed that the plaintiffs have practically admitted the case set up by the defendants, while discussing the evidence in para 11 of the judgment.

This Court has also heard the learned counsel for the parties and with their able assistance gone through the judgments passed by the learned courts below as well as the record.

Learned counsel for the appellants has vehemently argued that the Rapat Roznamcha records partition as well as exchange. He submitted that there cannot be joint entry with regard to partition and exchange of the property.

This Court has considered the submissions.

Parties to this litigation are brothers. They had orally settled their dispute and initially partitioned the property and thereafter exchanged. Both the brothers went to the revenue official and got entered a report to this effect, which was thumb marked by them. Since Section 118 of the Transfer of Property Act, 1882 has not been made applicable in the State of Haryana, therefore, oral exchange is permissible. Revenue record was corrected in the year 1985 and the parties acted thereupon. The suit has been filed after a period of 21 years.

No other argument was raised.

In view of the aforesaid discussion, there is no ground to interfere with the concurrent findings of fact arrived at by the courts below. The Regular Second Appeal is dismissed. Pending application, if any, shall also stand disposed of.

15.05.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No