

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

RSA No.1436 of 2013 (O&M)
Date of decision : 12.03.2018

Surinder Singh and others

...Appellants

Versus

Gurdeep Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vijay Lath, Advocate for the appellants.

Mr. Sarju Puri, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

CM No.10745-C of 2017

For the reasons stated in the application, which is duly supported by an affidavit, legal heirs of deceased respondent No.2-Surjit Singh son of Sh. Gurbux Singh and respondent No.7-Majja Singh son of Sh. Sadhu Singh, as mentioned in the application, are ordered to be brought on record, for the purpose of prosecuting the present appeal.

Application is disposed of.

Main Case

The plaintiffs-appellants are in the Regular Second Appeal against the judgment passed by the learned First Appellate Court reversing

the judgment passed by the learned trial Court and dismissing the suit filed by the plaintiffs.

At the outset, it must be noticed that originally the plaintiffs filed a suit which was contested by defendant Nos.1 and 2 i.e. Surjit Singh and Gurdeep Kaur. The suit was decreed on 28.09.2010. Only Gurdeep Kaur filed the first appeal, which was accepted. In this appeal, Gurdeep Kaur is represented, who is only the contesting respondent.

In the considered opinion of this Court, the question which requires adjudication is as under:-

1. Whether the suit filed by the plaintiffs claiming declaration that they are in joint possession of the land purchased by them through a registered sale deed can be dismissed as pre-mature?

The plaintiffs filed a suit claiming that they had purchased the land measuring 15 kanals 19 marlas vide registered sale deed dated 15.06.1987 from one Sh. Gurbux Singh son of Bhagat Singh, predecessors-in-interest of defendant Nos.1 to 5. The suit was contested only by defendant Nos.1 and 2. Remaining defendants were ex parte. The defendants contested the suit and submitted that the sale deed is a bogus document prepared in connivance with the alleged witnesses. The sale deed was also alleged to be forged and fabricated document.

Learned trial Court, after appreciation of the evidence available on the file, held that Gurbux Singh, predecessor-in-interest of defendant Nos.1 to 5 had executed a sale deed and thus transferred the right, title or interest in the property measuring 15 kanals 19 marlas in favour of the plaintiffs vide registered sale deed dated 15.06.1987.

Gurdeep Kaur-respondent No.1 filed the first appeal. Learned First Appellate Court has chosen to accept the appeal on the ground that the suit is pre-mature. Hence, this appeal.

It may be noticed that the sale deed, which has been proved on the file is dated 15.06.1987. The suit was filed after a period of 15 years i.e. on 07.03.2002. It is the case of the plaintiffs that pursuant to the sale deed, they were put in possession of land measuring 15 kanals 19 marlas, which is an undivided share in two khewats having total area of 77 kanals 2 marlas. It is the case of the plaintiffs that they were put in possession of the land, however, the revenue authorities have only entered the mutation of land measuring 11 kanals 12 marlas and not 15 kanals 19 marlas.

NOW THE STAGE IS SET FOR CONSIDERING THE QUESTION OF LAW.

1. *Whether the suit filed by the plaintiffs claiming declaration that they are in joint possession of the land purchased by them through a registered sale deed can be dismissed as pre-mature?*

A careful reading of the sale deed shows that the land has been described as an undivided share of land comprised in following khewats numbers, khatauni numbers, rectangle numbers and khasra numbers:-

“Khata No.402/549, 403/550-551, Khasra No.70//16(8-0), 17(8-0), 24(8-0), 25(8-0), 71//11(8-0), 20(8-0), 21(8-0), 15//5/2(0-15), 13(7-8), 18/1/3(0-7), 14//1(8-0), 61//7/2(2-4), 8/1(2-8), Kitta 13”

Both the Courts have found that the sale deed in favour of the plaintiffs is a valid and genuine document. The defendants are not in appeal against the aforesaid. It is further the case of the plaintiffs that they have

been struggling to get the mutation of the remaining land as the revenue authorities are not sanctioning the mutation with respect to the land measuring 4 kanals 7 marlas, although, the mutation has been sanctioned with respect to the land measuring 11 kanals 12 marlas. As noticed, the plaintiffs filed a suit after a period of 15 years from the day they became owners in possession. The suit filed by the plaintiffs could not be held to be pre-mature. The plaintiffs are entitled to be recorded in the revenue record as owner of the complete land purchased i.e. 15 kanals 19 marlas. The mutation has been sanctioned for a smaller portion. Such being the position, the learned Appellate Court committed a obvious error in dismissing the suit as pre-mature. The plaintiffs have waited patiently for a period of 15 years. The plaintiffs being owners are entitled to be recorded as owners in the revenue record for complete land i.e. 15 kanals 19 marlas.

In view of the discussion made above, the question of law is answered in favour of the appellants.

It is not in dispute that the plaintiffs have filed the suit for declaration with respect to the land which has been mentioned in the sale deed. Of course, the land earlier was comprised in two khatas i.e. khewat No.402/549 and khewat No.403/550 and 551. Now it appears that during this period, the land is comprised in three khewats i.e. 519/651, khata No.403/555 and khata No.429/554.

Once the khasra numbers are same, it cannot be said that the plaintiffs are claiming any property beyond what has been purchased by them through registered sale deed.

In view of the discussion made above, the Regular Second

Appeal is allowed. The judgment and decree passed by the First Appellate Court is set aside and that of the trial Court is restored.

All the pending miscellaneous applications are disposed of, in terms of the abovesaid judgment.

12.03.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No