

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

RSA No.654 of 2013 (O&M)

Date of decision : 30.08.2018

Mansha Singh

...Appellant

Versus

Charan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. H.S. Diwana, Advocate for the appellant.

Mr. S.S. Rangi, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

CM No.1816-C of 2013

For the reasons stated in the application, which is duly supported by an affidavit, delay of 26 days in refiling the present appeal is condoned.

Application is allowed.

Main Case

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while dismissing his suit for separate possession of half share of land situated in abadi.

It is pleaded case of the plaintiff that the plaintiff and defendant-Rattan Singh, who is now no more, were joint owners of abadi

land to the extent of half share in Village Dharak Khurd.

The defendant-Rattan Singh had constructed the house on the eastern side whereas the plaintiff had constructed the house on the western side. Thereafter, it is the case of the plaintiff that he demolished his construction and constructed a new one outside the abadi in the land which could identified by khasra numbers and now the defendant wants to usurp the land.

The defendant contested the suit and pleaded that the defendant is not co-sharer. It was pleaded that both the parties were joint owners of land in abadi in Village Dharak Khurd and the land situated in Village Pamour. There was an oral exchange through which the entire land in khasra No.142 (1 kanal and 5 marlas) was exchanged with the land of abadi at Village Dharak Khurd and later on exchange was reduced in writing on 26.06.1989.

The defendant further pleaded that the plaintiff exclusively entered into an agreement to sell in order to sell the property situated in Village Pamour i.e. khasra No.142 with Surjit Singh and of course later on when the sale deed was executed, Rattan Singh also joined in execution of the sale deed, although, the entire sale consideration was received by the plaintiff in terms of the oral exchange.

Both the Courts below, after examining the evidence, dismissed the suit filed by the plaintiff after recording a finding that the exchange between the parties is proved.

Learned counsel for the appellant submitted that no doubt oral exchange is permissible in State of Punjab, however, once it is reduced into

writing, it is required to be registered as per Section 17 of the Registration Act. He, hence submitted that exchange deed is not admissible in evidence.

On the other hand, learned counsel, while drawing the attention of the Court to the finding of the First Appellate Court wherein the plaintiff when appeared in the evidence has admitted the exchange of land with Rattan Singh, submitted that exchange has been acted upon and even if the exchange deed is ignored once oral exchange is admitted that is sufficient to confer the rights pursuant to the exchange.

This Court has considered the submissions made by the respective counsels and with their able assistance gone through the judgments passed by both the Courts below and the record.

In the present case, it is proved on file and is a finding of fact arrived at by the Courts below that the plaintiff had exclusively sold the land measuring 1 kanals 5 marlas comprised in Khasra No.142 situated in Village Pamour. It is not in dispute that the agreement to sell which was only executed by the plaintiff when he received earnest money of ₹25,000/-, there is no evidence that he parted with half of the amount with Rattan Singh. Even oral exchange between the parties had been acted upon. There is admission of the appellant admitting the exchange of land with Rattan Singh in oral evidence.

Although, learned counsel for the appellant tried to explain this admission by submitting that this exchange is with respect to different land, however, this is not the case set up by the plaintiff in the pleadings.

Learned counsel for the appellant cannot be permitted to built up a new case in favour of the appellant.

Keeping in view the findings of the Courts below which are neither shown to be suffering from any misreading of the evidence or perversity, this Court does not find any good ground to interfere.

Regular Second Appeal is dismissed.

Learned counsel for the appellant has moved an application for additional evidence, in order to prove the copy of the sale deed jointly executed by Rattan Singh and Mansha Singh pursuant to the agreement to sell with Surjit Singh.

In the considered opinion of this Court, even if the aforesaid sale deed is taken into consideration that itself would not prove that Rattan Singh had received any amount from the sale consideration. As per the agreement to sell, sale consideration is ₹60,000/- whereas the sale consideration mentioned in the sale deed is ₹12,500/-. Hence, the application for additional evidence is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

30.08.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No