

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

**R.S.A. No 1652 of 2015 (O&M)
Date of decision : 01.02.2018**

Jagdish and ors.

....Appellants

versus

Anil Kumar & ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Arun Yadav, Advocate
for the appellants.

RITU BAHRI, J. (Oral)

This regular second appeal is directed against the concurrent finding of facts recorded by the Court below whereby the suit of the plaintiffs-appellants (herein after to be referred as 'the appellants') for declaration, has been dismissed.

The case of the appellants before the Court below was that Sh. Hajari Lal father of appellant No. 1 and grandfather of appellant Nos. 2 to 5 and defendant Nos. 1 to 9 was the owner in possession of agricultural land having Khewat No. 1, Khatoni No. 1 min Mustil No. 7 Killa No. 16/1 (6-4), 17 (6-17), 18 (5-11), 24 (5-1) and Mustil No. 10 Killa No. 4/1 (3-11), 16 (8-0), 17 (6-8), 24 (6-0), 25 (6-8), 25 (8-0), mustil No. 11 Killa No. 21 (8-0) 22 (8-0) Mustil No. 12 Killa No. 2 (7-2) mustil No. 16 Killa No. 3 (8-0) total rakba 87 kanal 02 marla and mustil No. 9 Killa No. 16/2 (1-15), 25 (6-3), Mustil No. 10 Killa No. 21 (7-11) Mustil No. 16 Killa No. 2 (7-9) measuring rakba 22 kanal 18 marla as per jamabandi for the year 1973-74 situated in village Rughnath Pura.

It has been further averred that the relations of the father of the defendants no.7 to 9 namely Surajbhan who was son of Hazari were not cordial

with his sisters namely Vidhya and Triya. Therefore, he got executed a lease deed of 27 kanal 2 marla land for a period of 99 years in his favour i.e. Surajbhan and in favour of Jagdish from his father through vasika no.90 dated 14/15.6.1971. It has been further averred that Sh. Hazari was the simple person and he was having faith in Surajbhan. However, the said Surajbhan by cheating also got executed another lease deed no.91 dated 14/15.6.1971 in favour of his wife Shakuntla for a land of 22 kanal 18 marla. It has been further averred that after the death of Hazari the mutation no.187 dated 21.7.1978 of his entire land has been sanctioned in favour of Surajbhan, Jagdish, Vidya and Triya on the basis of natural succession and thereafter, in view of said mutation all the legal heirs of Hazari became owner in possession of the suit land hence, the lease deed no.90, 91 became inoperative. But, the mutation no.237 and 238 dated 27.4.1991 sanctioned on the basis of the said lease deed are illegal, null and void and is not binding on the plaintiff.

Further, it is the case of the plaintiff that the said lease deed became inoperative from 1971 to 1991. Thereafter on 6.3.1991 a civil suit no.851 titled as Satynarain and others vs. Triya filed by which Smt. Triya had given her share in the suit land by suffering a decree in favour of plaintiff no.2 to 5 and thereafter the mutation no.237 and 238 dated 27.4.1991 was got sanctioned on the basis of lease deed no.90 and 91. It has been further averred that the revenue officials had no right to sanction the mutation after a period of 12 years on the basis of alleged lease deed.

It is further the case of the plaintiff that on account of family settlement Smt. Vidya also suffered lease deed Vasika no.186 dated 8.6.2000 in favour of defendants no.1 to 4 and thereafter the partition of the suit land had taken place and the plaintiff is having the ownership and possession over the $\frac{1}{2}$

share of the suit land. It has been further averred that the plaintiff asked the defendants to cancel the mutation no.237 and 238 and got ½ share of the plaintiff registered in the revenue record. However, earlier the defendants kept on prolonging the matter on one pretext or the other and on 20.11.2002 flatly refused to do so.

Both the Courts below held that mutation No. 237 and 238 has been sanctioned in favour of the defendants vide order dated 27.04.1991 on the basis of lease deed vasika No. 90 and 91. The only ground taken by the appellants to challenge the alleged mutations is that mutations were sanctioned on the basis of lease deed vide vasika No. 90 and 91 which were got executed in the year 19710 whereas mutations No. 237 and 238 have been sanctioned in favour of the defendant in the year 1991. Therefore, the alleged mutation was got sanctioned after a gap of 20 years whereas revenue officials had no authority to sanction the mutation after a period of 12 years from the date of alleged sale deed.

Thus, the appellant failed to prove that the period of limitation for the sanction of mutation on the basis of the alleged lease deed is 12 years. P.W.1 Jagidsh in his cross examination admitted the fact that the mutation was got sanctioned within a year after getting the land from Triya and the mutation was valid for the reason that the mutation of 99 years lease had already been sanction. He further admitted that the mutation of the lease deed was rightly sanctioned.

The appellant had earlier also filed a suit for permanent injunction and the same were dismissed vide order dated 11.03.2008. Even sons of Jagdish filed a suit titled Sat Narayan etc v. Triya vide which their Bua i.e Triya transferred her share in the suit land in their favour. At that time, they had obtained a revenue record from the concerned Patwari and the suit was decreed in their favour. They had obtained a revenue record from the concerned Patwari

and the suit was decreed in their favour on 06.03.1991. Thereafter sons of Jagdish filed an application against the defendants seeking partition of the land. Even when Vidya suffered a release deed of her share in favour of defendants on 08.06.2000 the mutation of the same was entered and sanctioned in General Meeting in Ragunathpura which is Ex D1 on 31.03.1991 and the present suit was filed on 11.12.2007.

Thus, the finding of facts recorded by both the Courts below does not require any interference by this Court.

No substantial question of law arises for adjudication by this Court.

The appeal is dismissed.

February 01, 2018
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No