

RSA No.3359 of 2016 (O&M)

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

RSA No.3359 of 2016 (O&M)

Date of decision:13.11.2018

Zile Singh and others

... Appellants

Vs.

Om Parkash and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vijay S. Kajla, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.8875-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 44 days in re-filing the appeal is condoned.

C.M stands allowed.

C.M.No.8877-C of 2016

The application is allowed, subject to all just exceptions. Legal representatives of appellant no.8-Pirithi as mentioned in the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

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The appellant-plaintiffs have though partly been successful in seeking injunction qua forcible interference and possession but relief qua declaration with regard to ownership derived by virtue of sale deed dated

12.06.1958 by challenging the mutation bearing Nos.100 dated 16.05.1962 and 341 dated 29.07.2008 was declined. The Lower Appellate Court in appeal taken by the plaintiffs in the absence of cross-appeal had set aside the relief of injunction.

The suit aforementioned was filed on the premise that plaintiffs had purchased the agricultural land measuring 23 kanals 11 marlas from Singhu. Despite that mutation bearing No.100 dated 16.05.1962 was wrongly entered in favour of the defendants. Even mutation bearing No.341 was also incorrectly entered but the nature of the property remained the same. By virtue of the sale deed, they had been put in possession.

The trial Court on the basis of jamabandis Ex.P7 to Ex.P14, granted the injunction but declined the relief of declaration on the premise that Singhu and Raju were not found the owners of the suit property being lease holders, in fact, the suit property was in the name of temple Sita Ji.

Learned counsel appearing on behalf of the appellants submitted that the Lower Appellate Court could not have set aside the injunction granted by the trial Court in the absence of cross-appeal. The jamabandis reflected the possession of the appellants and a person who has been found in continuous possession cannot be dispossessed except in due course of law, therefore, the judgment and decree of the Lower Appellate Court is liable to be set aside. The Lower Appellate Court also remained oblivious of the fact that challenge was only laid to the mutation bearing No.100 and therefore, the suit was barred under Order 2 Rule 2 CPC as in the previous round of litigation, the matter with regard to aforementioned

mutation was compromised.

I am afraid the aforementioned argument is not sustainable in the eyes of law, for, as jamabandis shown in the Court did not establish that there was some correction after the alleged sale deed. All the jamabandis are post sale deed, wherein, in column of cultivation, the name of predecessor-in-interest as lessee is reflected which did not confer any title upon the vendors of the sale deed. In such circumstances, declaration rejected by the trial Court is fully justified.

No doubt, the appellant-plaintiffs had also laid a challenge to the mutation bearing No.341 but the Lower Appellate Court found that challenge was only laid to mutation no.100 which was subject matter of decree dated 28.01.2008 and therefore, held the suit to be barred under Order 2 Rule 2 CPC.

Be that as it may, fact of the matter is that mutation bearing No.341 also pertained to the same land. All the aforementioned mutations reflected the possession of the lessees. In such circumstances, the appellants were not entitled to injunction.

The finding of facts and law arrived at by the Lower Appellant Court is fully justified and do not call for any interference.

The appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 13, 2018

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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No