

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

RSA No. 5788 of 2016(O&M)

Date of decision: 12.10.2018

Pal Singh

.....Appellant

VERSUS

Nasib Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Kanwal Goyal, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for declaration that mutation No.2438 regarding exchange of land measuring 2 kanals is illegal, null and void and not binding upon the plaintiff/appellant, therefore, liable to be cancelled as land measuring 2 kanals has not been given by the respondents/defendants to the plaintiff with relief of mandatory injunction directing the defendants to hand over possession of land measuring 2 kanals was dismissed by the trial Court vide judgment and decree dated 13.03.2015 and appeal preferred by unsuccessful plaintiff/appellant did not find favour with the Additional District Judge, Ludhiana.

Counsel for the plaintiff/appellant would urge that parties to the suit executed an exchange deed whereby 2 kanals of land from Khasra No.23/8 and 23/9 total measuring 16 kanals was given by the appellant to defendants and defendants/respondents gave in exchange 2 kanals of land

out of land measuring 27 kanals 4 marlas comprising khasra No.17//9, 20/3, 23/2 and 24//9. On the basis of exchange, mutation bearing No.2438 was sanctioned. It is vehemently argued that as per jamabandi for the year 1998-99 Ex.PX obtained by the appellant/plaintiff from the head office at Ludhiana, the respondents/defendants have not been recorded to be co-owners of aforesaid land measuring 27 kanals 4 marlas. The respondents/defendants had played fraud upon the appellant by depriving him of 2 kanals of land and taking away 2 kanals of land belonging to the plaintiff. Another submission made by counsel is that the appellant filed an application dated 14.11.2011 to adduce additional evidence to place on record certificate issued by the Patwari but the same has wrongly been dismissed by the Appellate Court.

Indisputably, the appellant/plaintiff was a co-sharer in land measuring 27 kanal 4 marlas out of which he got 2 kanals of land by way of exchange from Nasib Singh and Jagdev Singh. The exchange deed was executed in the year 2009 but the same does not make reference to the Jamabandi on the basis whereof, the respondents/defendants had given 2 kanals of land in exchange to the plaintiff/appellant. The appellant/plaintiff has not placed on record latest Jamabandi prior to year 2009 but on the contrary, relied upon Jamabandi Ex.PX for the year 1998-99. The relevant Jamabandi would have been for the years 2003-04 or 2004-05. However, in the Jamabandi for the year 2008-09 Ex.P2, the defendants have been recorded to be co-owners to the extent of 40 shares in land measuring 27 kanal 4 marlas. As the plaintiff/appellant has failed to produce on record the Jamabandi relevant at the time of execution of

exchange deed, he cannot derive any advantage to his contention from the Jamabandi for the year 1998-99 in order to contend that the respondents/defendants were not co-owners in land measuring 27 kanals 4 marlas or to say that they had no share much less to the extent of 2 kanals in the said land.

So far as plea of the appellant with regard to dismissal of his application for additional evidence, the application apparently does not fall within the purview and ambit of clause (a) and (aa) of Rule 27 of Order 41 of the Code of Civil Procedure, 1908, therefore, the appellant cannot assert his right to adduce additional evidence to produce a certificate issued by the Patwari nor can be permitted to find fault in the order rejecting his application by the Appellate Court.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

OCTOBER 12, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no