

RSA No. 6102 of 2015 (O&M)

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

**RSA No. 6102 of 2015 (O&M)
Date of decision: 28.5.2018**

Chandermukhi and others

... Appellants

Versus

Phulia @ Phulla (since deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Brijender Kaushik, Advocate
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the appellants-plaintiffs was dismissed by the trial court, vide judgment and decree dated 21.12.2012. As even the appeal preferred against the said decree failed, and was dismissed on 11.5.2015, they are in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiffs prayed for a declaration that out of the land measuring 117K-18M, comprised in khewat No. 266/242, khatoni No. 538-550, situated in village Kirmara, Tehsil and District Hisar, plaintiffs No. 1 to 4 were owners in possession to the extent of 294/2358th share instead of 147/2358th share. Likewise, plaintiffs No. 5 to 7 also had an equal share, rather than 74/2358th share, and plaintiffs No. 8 to 15, instead of 74/2358th

share, were owners in possession of 148/2358th share. On the other hand, the share of the defendants was recorded more in the revenue record than their entitlement. Thus, the position in the records of rights was liable to be accordingly rectified. Consequently, the sale deed dated 18.6.2001, vide which defendants No. 3 to 7 had sold 118/2338th share out of the suit land in favour of defendants No. 12 to 14 was invalid, and could not be acted upon. And, even the mutation that was sanctioned pursuant thereto, in favour of defendants No. 12 to 14, was required to be cancelled. Thus, the suit.

In the written statement filed on behalf of defendants No. 3 and 4, it was averred that shares of the parties were correctly recorded in the record of rights and defendant No.3 had executed a sale deed No. 1964, dated 18.6.2001, being power of attorney holder of defendants No. 4 to 7, to the extent of 118th share, that was correctly recorded in the record of rights.

In a separate written statement filed on behalf of defendants No. 12 to 14, it was maintained that the sale deed executed by defendant No.3 to 7 in their favour was in proportion to their shares in the joint khata.

On a consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that although the plaintiffs had sought a declaration that the revenue entries qua the title of the respective parties were required to be rectified, but nothing was pleaded or brought on record, as to when any such mistake actually occurred. Om Parkash (PW1), examined by the plaintiffs, rather conceded in his cross-examination, that shares of defendants No. 3 to 7 were correctly recorded in the revenue record, and defendants No. 12 to 14 had only purchased 118/2358th share in the joint holding, therefore, they were the owners in possession thereof. Likewise, Chandermukhi (PW2), conceded that

defendants were owners in possession of the land to the extent of their shares. Similarly, Ved Parkash (PW3), deposed that earlier the revenue record was not correct, but the present record reflected the correct position. Thus, all the witnesses examined by the plaintiffs conceded, in their cross-examination, that the revenue entries were correctly recorded, and, thus, the plaintiffs failed to discharge the onus that the entries in the record of rights as regards share/title of the parties were incorrect. Further, a sale deed dated 18.6.2001, vide which defendants No. 3 to 7 had sold 118/2338th share out of the suit land in favour of defendants No. 12 to 14, was invalid, for they had sold land beyond their entitlement. However, counsel for the plaintiffs, during trial, gave up defendants No. 5 to 7, pursuant to a specific statement made in this regard on 20.7.2009. Once the plaintiffs had given up the relief claimed against defendants No. 5 to 7, their grievance that they had transferred an area beyond their share in favour of defendants No. 12 to 14 also paled into insignificance. Further, the plaintiffs had failed to place on record a copy of the judgment and decree dated 27.2.1988, rendered by the Sub Judge, Hisar, in Civil Suit No.82-C of 1988 (Satyawan Vs. Jug Lal), as also a copy of mutation No. 1845, dated 20.9.1989, that was sanctioned pursuant thereto, on the basis whereof the plaintiffs had questioned the veracity of the revenue entries. In short, the plaintiffs failed to substantiate their claim for lack of any cogent evidence. Therefore, the only and the inevitable conclusion that could be reached was: the suit filed by the plaintiffs was wholly misconceived and devoid of merit.

On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the findings recorded by both the courts were either contrary to the record or suffered from any

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material illegality.

No question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit, is accordingly dismissed.

28.5.2018
AK Sharma

(ARUN PALLI)
JUDGE

Whether speaking / reasoned:	YES
Whether Reportable:	NO