

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

122

RSA No.1738 of 2017 (O&M)

Date of decision: 20.09.2018

Seth Fateh Chand Gulab Singh Jain
Memorial Trust Society

..... Appellant

Versus

Anil Kumar Jain and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Anurag Jain, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.1-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

It is not disputed that in the civil suit filed, decreed on 10.06.1983, the name of the plaintiff-respondent and his sister were deleted from the array of parties vide order dated 30.05.1983. The plaintiff filed the present suit for declaration that mutation sanctioned by the revenue authorities taking away his share also is illegal. Both the Courts have held that the decree dated 10.06.1983 does not operate qua the rights of the plaintiff in view of the order dated 30.05.1983 and therefore, the mutation entered into by the revenue authorities is illegal.

Learned counsel for the appellant has submitted that there was a preliminary decree for partition of the property and therefore, the plaintiff was required to affix the ad valorem Court fee. He further submitted that

the suit filed by the plaintiff was barred by time.

This Court has considered the submissions, however, find no substance therein. A bare look at the issues framed, it is apparent that the Court fee was not the issue raised before the Courts below. In any case, every co-owner is deemed to be owner of every part of the land. The plaintiff is only claiming that he is owner of 1/14th share and therefore, entitled to possession by way of partition. This issue has been dealt with in detail by the Court in Civil Revision No.3280 of 2014 titled 'Rajiv Kumar and another Vs. Rakesh Kumar and others', decided on 13.08.2015. Hence, there is no substance in the first argument of learned counsel for the appellant.

As regards second argument, it will be noticed that the mutation neither confers any title nor confers any cause of action. The mutation is sanctioned only for fiscal purpose and to update the record. In the present case, it is not in dispute that the decree dated 10.06.1983 is not against the plaintiff and therefore, wrong entry by the revenue authorities has to be corrected. The ownership of the property cannot be taken away merely by making a wrong entry in the revenue record.

In view thereof, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

20.09.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No