

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

RSA No.3006 of 2017 (O&M)

Date of decision : 14.11.2018

Mahender

...Appellant

Versus

Nathu Ram (deceased) through his LR's and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sajjan Singh, Advocate for the appellant.

Mr. Sudhir Hooda, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.1-appellant is in the Regular Second Appeal against the judgment passed by the learned First Appellate Court reversing the judgment of the trial Court resulting in decreeing of the suit filed by the plaintiffs.

Dispute in the present case is with regard to a passage which is situated on the eastern side of the property of the plaintiffs. The predecessor of the plaintiffs purchased 300 square yards land vide registered sale deed dated 10.04.1933. It is further pleaded case of the plaintiffs that since the plot which was purchased was located behind the house of the defendants, therefore, an exchange took place between the parties, reduced into writing on 10.05.1933, and in lieu thereof, 50 square yards land was given to the predecessor of the defendants in lieu of the passage provided to the predecessor of the plaintiffs upto the main lane.

Learned First Appellate Court after examining the evidence have

found that the plaintiffs are in possession of land measuring 250 square yards and, therefore, it is proved that 50 square yards had been given to Binder and Ishar Khati, who were predecessor of the defendants. Kedar Singh, DW1 has admitted that Ghasi son of Binder was his real brother and Mahender was son of Sube son of Ishar. It may be noted here that the existence of street is not in dispute. The defendants-appellant claim that the aforesaid street is their exclusive private street and the plaintiffs have no right to pass through the aforesaid street.

Learned counsel for the appellant has submitted that no doubt the sale deed and exchange deed have been produced but they are in Urdu language and the plaintiffs have not examined a person who translated these deeds in the language which Court understand. He further submitted that Ex.P3 is referred to by the learned trial Court as Mark B and, therefore, it cannot be read in evidence.

Learned First Appellate Court has examined this aspect and have found that the translation of the sale deed as well as exchange deed executed in the year 1933 written in Urdu language have been produced on file. The defendants have not led any evidence to prove that the translation is incorrect. Once the original document has come on record and the translation thereof was produced, the defendants who were challenging the correctness of the aforesaid translation were required to lead evidence to prove that the translated documents were not correct translation of the original which were also part of the record. The primary documents which have come on record are sale deed as well as exchange deed. Since the original documents have come on record, the Court cannot ignore those documents on the ground that

the person who translated has not been examined particularly when the defendants failed to prove that the translation was incorrect. Even before this Court, apart from the contention, no material has been filed proving that translation of the documents was incorrect.

Next argument of the learned counsel is also without any substance because from the reading of the statement of the plaintiffs, it is apparent that initially the document was marked as a exhibit. Of course in a subsequent statement, it has been referred to Mark B but there is no order which has been brought to the notice of the Court de-exhibiting documents in question. Still further, learned First Appellate Court has rightly drawn inference keeping in view the fact that the area in possession of the plaintiffs is less than what was purchased. The defendants have not led any evidence to prove that the plaintiffs are in possession of 300 square yards area which was purchased by their predecessor on 10.04.1933 through a registered sale deed. Still further, it has come in evidence that in the aforesaid street, concrete floor was got laid by the Gram Panchayat, therefore, inference drawn by the learned First Appellate Court on appreciation of the evidence is in accordance with law.

In view thereof, there is no ground to interfere.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

14.11.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No