

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

RSA No.388 of 2017 (O&M)

Date of Decision: February 07, 2018

Surjit Kaur and another	...Appellants
Versus	
Ram Singh and others	...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.S.C.Chhabbra, Advocate for the appellants.

HARINDER SINGH SIDHU, J.

This regular second appeal has been filed against the judgment and decree of the courts below.

The plaintiffs-respondents filed a suit seeking a declaration that they were owners in possession of land measuring 12 Kanal 7 Marlas bearing Rectangle and Killa No.70//3/1(4-0), 4/1(4-0), 59//25min (4-6), 76//8/1 min (0-1) on the basis of sale deed No.1247 dated 26.10.2006. They also sought rectification of the sale deed dated 26.10.2010 to the extent that instead of Khasra No.59//25 Min (4-6), Khasra No.76//14 Min (4-6) had been wrongly mentioned therein. They also sought a declaration that the mutation No.892 which had been rejected by the revenue authorities in respect of the above sale deed was illegal and did not affect the rights of the parties. Alternative relief of being declared owner in joint possession of land to the extent of 12 Kanals and 7 Marlas on the basis of the sale deed was also prayed for.

It was their case that the defendants-appellants were co-owners in

possession to the extent of 13/48 share out of suit land measuring 59 Kanal

16 Marlas situated at village Bhawa, Distt. Mansa. They sold land measuring 12 Kanal 7 Marlas bearing Rectangle and Killa No.70//3/1(4-0), 4/1(4-0), 59//25min (4-6), 76//8/1 min (0-1) in favour of the plaintiffs through registered sale-deed dated 26.10.2006. Due to mistake, instead of Khasra No.59//25 min (4-6), Khasra No.76//4min(4-6) was wrongly mentioned in the sale-deed. In fact, Khasra No.76//4min(4-6) had already been alienated by the plaintiffs, who were also co-sharers in the same land measuring 59 Kanal 16 Marlas. After the sale, their vendees were already owners in possession of Khasra No.76//4min(4-6). Hence, the sale-deed was liable to be rectified. As the defendants had not acceded to the request of the plaintiffs to execute the Tatima sale-deed in their favour, the suit was filed. Mutation had also not been sanctioned on the basis of the said sale-deed in favour of the plaintiffs. Hence, the revenue records also required to be corrected. Alternative relief as indicated above was also prayed for.

The case of the defendants was that they had executed the sale-deed only concerning the property, which was, in fact sold by them and mentioned in the sale-deed. It was specifically denied that they had sold Khasra No.59//25 min (4-6) to the plaintiffs.

In order to prove their case, the plaintiff Paramjit Singh appeared as PW1, plaintiff Binder Singh as PW2, Mela Singh attesting witness to the sale-deed dated 26.10.2006 appeared as PW3. On the other side, Paramjit Kaur defendant No.2 appeared as DW1.

The execution of the sale-deed was not denied by the defendants. The dispute was only with regard to Khasra No.59//25 min (4-6). The plaintiffs claiming that instead of Khasra No.59//25 min (4-6), Khasra

No.76//4min (4-6) had wrongly been mentioned in the sale-deed. The learned Trial Court held that as per the sale-deed land measuring 12 Kanal 7 Marlas owned by the defendants was sold to the plaintiffs. However, as they themselves were not in exclusive possession of the Khasra numbers mentioned in the sale-deed, they were not competent to specify the Khasra numbers in the sale-deed. Sale of a part of joint land, even by referring to specific Khasra Numbers, is considered sale of a share only. As the defendants were not co-owners in exclusive possession, they were not competent to alienate the joint land by mentioning specific Khasra numbers. The prayer for granting a decree regarding specific Khasra number was thus declined. Instead, the plaintiffs were declared as co-owners in the joint land to the extent of 247/1196 share in total land measuring 59 Kanal 16 Marlas. The defendants were restrained from alienating or disposing of land measuring 12 Kanal 7 Marlas out of their share in joint land. Injunction qua alienation of remaining land was declined.

On appeal filed by the defendants – appellants, the learned Appellate Court modified the decree of the learned Trial Court and decreed the suit as under:-

“(i) *Plaintiffs are declared co-owner/ cosharer in joint possession to the extent of 247/1196 share i.e. 12 Kanals and 7 Marlas on the basis of sale deed No.1247 dated 26.10.2006, out of the suit land comprising in khewat No.110. It is, further, clarified that mere mentioning of certain khasra numbers in the sale deed is superfluous and the sale is operative on the whole of the land comprised in the entire khewat no.110 on all the khasra numbers falling in this khewat including khasra no.59//25.*

(ii) *Defendants are restrained from alienating the land measuring 12 Kanals and 7 Marlas out of their share in the suit land which they had sold vide sale deed No.1247 dated 26.10.2006 to the plaintiffs till the sanctioning of mutation in favour of plaintiffs on the basis of sale deed dated 26.10.2006.”*

Learned counsel for the appellants contended that the suit was barred by limitation. The mutation had been rejected on 23.4.2007 and the suit for declaration could be filed within three years of rejection but it having been filed on 13.3.2012 was barred by limitation. He further argued that as per Section 92 of the Indian Evidence Act, no oral evidence is admissible qua the contents of a document. He stated that the findings of the courts below are based on a gross interpretation of sale deed dated 26.10.2006. As Khasra No.76//25 min (4-6), which was mentioned in the sale-deed had already been sold, the sale-deed was limited to the sale of the remaining Khasra Numbers, specifically mentioned in the sale-deed. Thereby, the land subject matter of the sale-deed would not be 12 Kanal 7 Marlas, but would be 8 Kanal 1 Marlas after exclusion of Khasra No.76//25 min (4-6).

Both the arguments of the learned counsel are untenable.

The learned lower Appellate Court has rightly rejected the contention of the appellants of the suit being barred by limitation. It is well settled that the right to sue for declaration accrues only when there is any threat or infringement to that right. A mere entry in the revenue record cannot be taken as a terminus quo for counting the limitation.

Similarly, the contention of the learned counsel for the appellants that the sale-deed ought to be limited to 8 Kanal 1 Marla after exclusion of 4 Kanal 6 Marlas comprised in Khasra No.76//25 min (4-6), cannot be accepted. The sale-deed is in respect of land measuring 12 Kanal 7 Marlas.

PW3 Mela Singh, attesting witness, who is also *Lamberdar* of the village,

specifically stated that the sale-deed was executed in the presence of the defendants and other witnesses. After admitting the sale-deed as true and correct, the defendants had appended their thumb impressions in his presence and presence of other witnesses, as well as plaintiff Major Singh. He as well as other witnesses also signed/thumb marked the sale-deed as attesting witnesses. The deed-writer also appended his seal and signatures on the sale-deed. Thereafter, the same was presented before the sub-Registrar and it was got attested.

Ld. Lower Appellate Court relying on decision of this court in ***Ram Chander Vs. Bhim Singh, (P&H) (FB) 2008(3) R.C.R. (Civil) 685*** held that the mentioning of certain Khasra Numbers in the sale deed was superfluous and irrelevant. The sale deed mentioning specific khasra numbers from the joint khewat will operate on all Khasra numbers falling in that joint khewat irrespective of whether those Khasra numbers are mentioned in the sale deed or not. In these circumstances, there is no merit in the contention of the learned counsel for the defendants-appellants that the land sold was only 8 Karnal 1 Marla and not 12 Kanal 7 Marlas as indicated in the sale-deed.

Thus, there is no merit in the appeal and the same is dismissed.

February 07, 2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No