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

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Date of decision : 27.03.2019

Ram Partap and others

... Appellants

Versus

Daya Nand (deceased) through LR's and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sudhir Aggarwal, Advocate
for the appellants.

Mr. C.B. Kaushik, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court, whereby the suit of the plaintiff, though dismissed by the trial Court, has been decreed by the lower Appellate Court.

The respondent-plaintiff sought declaration to the effect that he along with defendant No.9, Luxmi Narain, being sons of Jai Ram, were owner in possession of land measuring 6 kanals 18 marlas comprised in Rectangle No.46, Killa No.23, on the premise that in the year 1968, they purchased the aforesaid land comprised in Killa No.20/2, of same very rectangle number, from Birbal, vide registered sale deed dated 30.06.1968. Since Killa No.23 was closed to the land, already owned by the plaintiff and

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defendant No.9, the plaintiff and defendant No.9, exchanged Killa No.20/2 of Rectangle No.46 with Birbal, with the land comprised in Killa No.23 of Rect. No.46, having same area, resultantly both the parties came into their respective possession. For the last 15/16 years, had been in possession of the suit land and entry of exchange was also made in the jamabandi for the year 1968-69. Even mutation was also sanctioned. In the jamabandi for the year 1968-69, by mistake, the entry of *batai tihai* appeared against killa No.23, whereas the plaintiff never paid batai. Birbal father of defendant No.1 to 5, sold the land comprised in Killa No.23 to defendant Nos.6 to 8, without any information and knowledge of the plaintiff and defendant No.9, vide sale deed dated 06.06.1980, therefore, was constrained to file the suit. However, during pendency of the suit, defendant No.6 sold the land to Ram Partap, Dharampal and Pirthi and executed lease deed in favour of Ramji Lal, accordingly, were impleaded as defendant Nos.8-A to 8-D.

Defendant Nos.6 to 8 appeared, whereas remaining respondents were proceeded *ex parte*. Defendant No.5, filed admitted written statement, whereas defendant No.6, was later on proceeded *ex parte* and defendant Nos.8-A to 8-D, contested the suit being subsequent transferee and claimed themselves to be *bona fide* purchaser, on the basis of the sale deed dated 30.06.1980. It was claimed that revenue entries showing exchange were wrong, in respect of Killa No.23 as well as Killa No.20/2. The sale deed was validly executed by Birbal as it was in exchange and the mutation in favour of the plaintiff, was cancelled, which was not disclosed and objection qua the suit being barred by law of limitation, was also taken.

Since the parties were at variance, the trial Court framed the following issues:-

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- 1. Whether the plaintiff is owner of land measuring 6 kanals 18 marlas comprised in Rectangle No.46, Killa No.23/2 by exchange? OPP*
- 2. Whether the plaintiff is in possession of the suit land? OPP*
- 3. Whether the suit is barred under Order IX Rule 8 CPC? OPD*
- 4. Whether the plaintiff is estopped from filing this suit by his acts and conduct?*
- 5. Whether the suit is barred by limitation? OPD*
- 6. Whether the suit is false and frivolous and the defendant is entitled to special costs? If so, how much? OPD*
- 7. Relief.*

In support of the pleadings, the plaintiff examined two witnesses and brought on record Ex.P1 to Ex.P25, whereas the defendants examined three witnesses and brought on record Ex.D1 to Ex.D5.

The trial Court, on the basis of the evidence brought on record, by noticing that the mutation of exchange bearing No.1877, was on 13.06.1974 and the correction of the revenue record in favour of the defendants, held that the plaintiff miserably failed to prove the exchange and also noticed that there was an order of correction of khasra girdawaris, but the lower Appellate Court, in appeal, preferred by the plaintiff, reversed the findings, by holding that defendant Nos.8A to 8D, were fully aware of the fact that Shanu Ram was not in possession of the disputed land as the entry of oral exchange was recorded in the *rapat roznamcha* (Ex.P6).

Mr. Sudhir Aggarwal, learned counsel appearing on behalf of the appellants-defendants submitted that the lower Appellate Court has erroneously reversed the findings of the trial Court without noticing the fact that the plaintiff had not proved the documents, Ex.P1 to Ex.P5, in

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accordance with law, as vide statement dated 13.12.1984, were tendered in evidence. Patel Singh, Patwari, PW2, appeared and though attempted to prove the *rapat roznamcha* of the exchange Ex.P6, but in cross-examination spilled the beans by admitting that mutation No.1877 was, on 13.06.1974, rejected/cancelled. The khasra girdawaris were corrected in the name of defendants erstwhile sellers and subsequent vendees. The plaintiff has failed to establish on record that revenue record did not reflect the ownership of killa No.20/2, purchased vide sale deed of 1968. The Kanungo, who was appointed Local Commissioner, established on record that the possession was with the defendants of Rect. No.46, Killa No.23 and Ex.D6 is also the testimony of the same. There is no reference to the aforementioned documents by the lower Appellate Court in the impugned judgment. The revenue record relied upon by the plaintiff, have not been read in correct perspective as the jamabandi for the year 1968-69 reflected the ownership of the plaintiff qua Killa No.20/2, measuring 6 kanals 18 marlas. There would have been a force in the case of the plaintiff, had the plaintiff been deprived of the ownership and possession of Killa No.20/2, purchased from Birbal.

Per contra, Mr. C.B. Kaushik, learned counsel appearing on behalf of the respondent No.1, supported the impugned judgment and decree of the lower Appellate Court and submitted that column No.8 of jamabandi for the year 1968-69 and 1978-79 (Ex.P3 and Ex.P4), reflected the mutation. It was sufficient to establish the exchange. Rejection of the mutation proceedings were at the back of the plaintiff, therefore, cannot be looked into as it is a settled law that any order without compliance of principles of natural justice, cannot be taken into consideration and the

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remedy was to file Civil Suit, thus, urges this Court for dismissal of the present regular second appeal.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that the following Substantial Question of Law arises for determination:-

- 1. Whether the judgment and decree of the lower Appellate Court suffers from perversity and an outcome of misreading of the documentary evidence.*

On going through the impugned judgment, the entire focus of the lower Appellate Court had been on the *rapat roznamcha* (Ex.P6) reflecting the mutation of 1968, which came through the testimony of PW2, Patwari, who in cross-examination, admitted that vide mutation dated 13.06.1974, mutation No.1877, was set aside/cancelled.

As regards the possession, heavy reliance was laid on the entries of batai dated 08.01.1983, by clothing the possession of Daya Nand and Luxmi Narain, to be in adverse possession, but the matter of fact is that there is no reference to the report of the Local Commissioner (Ex.D5), *Rapat roznamcha* (Ex.D7), much less, khasra girdawari (Ex.D6), which proved that the plaintiff was not in possession of Rect. No.46/23. Ex.P3 and Ex.P4, jamabandi for the year 1968-69 and 1978-79, reflected the ownership of Daya Nand and Luxmi Narain, with regard to khasra No.20/2. If at all there was exchange, there would have been an entry qua the same very killa number in column No.5, instead of Birbal, but was mentioned as Kanhaiya Singh. It is not the case of the plaintiff that there was some exchange between him and Kanhaiya Singh. No explanation has come forth of such entry, in column No.5. In my view, the plaintiff miserably failed to

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prove the alleged exchange as mutation No.1877, had already been rejected. The findings of fact and law arrived at by the trial Court, in my view, were correct view after examination of the documentary evidence.

It is also a matter of record that as per the order of the revenue record, correction of khasra girdawaris, reflected the possession of defendant No.8B to 8D being subsequent vendees as well as 8A. All the aforementioned evidence have not referred to by the lower Appellate Court, therefore, the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law being perverse and the same is hereby set aside and that of the trial Court is restored. The substantial question of law, as framed above, is answered in favour of the appellants-defendants and against the respondent-plaintiff.

Resultantly, the second appeal is allowed.

27.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**