

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

112

RSA No.2579 of 2013 (O&M)

Date of decision: 20.03.2019

M/s D.A.E. Realtors Pvt. Ltd.

..... Appellant

Versus

Shri Balaji Rice Mill and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr. Ashwani Talwar, Advocate and  
Ms. Swati Arora, Advocate  
for the appellant.

Mr. V.K. Jindal, Sr. Advocate with  
Mr. Gopal Soni, Advocate  
for respondents No.1 to 3.

None for the remaining respondents.

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**ANIL KSHETARPAL, J. (ORAL)**

Defendant No.13-appellant is in the appeal against the judgment passed by the First Appellate Court reversing the judgment of the trial Court.

There is short dispute in the present case. Defendant No.1-Fakiria was a co-sharer to the extent of 31 kanals and 4 marlas i.e. 3/4<sup>th</sup> share in a joint khata with others measuring 41 kanals 12 marlas. Undisputed fact is that he was owner to the extent of 31 kanals 4 marlas which was undivided share in the property. There was a litigation between him and Jasmer Singh-defendant No.2 and a Court decree was passed on the basis of compromise dated 12.11.1987 and Jasmer Singh was declared entitled to 8 kanals land vide judgment and decree dated 12.11.1987.

Ultimately, the sale deed on the basis thereof was executed in his favour on 23.04.2007.

Fakiria sold 8 kanals land to the plaintiff vide sale deed dated 11.06.2003, although, possession of specific khasra number was handed over to the plaintiff. Thereafter, Fakiria vide sale deed dated 07.11.2006 sold 23 kanals 4 marlas land to defendant No.3. Defendant No.3, thereafter, sold 20 kanals 4 marlas to defendant No.13.

The entire dispute is whether defendant No.1 has sold the area in excess of his share or not. As noticed above, through a decree, defendant No.1 lost 8 kanals of land in 1997 and thereafter, he sold another 8 kanal to the plaintiff-respondent vide sale deed dated 11.06.2003. Thus, after deducting 16 kanals which had gone out of his kitty, he was left with 15 kanals and 4 marlas. Thus, the sale deed by defendant No.1-Fakiria in favour of defendant No.3 measuring 23 kanals 4 marlas was clearly in excess of his share. Defendant No.13-appellant claims ownership from defendant No.3. Defendant No.3 could not have sold more than what he was entitled to. Accordingly, First Appellate Court has rightly declared that the sale in favour of defendant No.13-appellant as also sale deed by defendant No.1 in favour of defendant No.3 would only be with respect to the remaining share of Fakiria i.e. 15 kanals 4 marlas.

Learned counsel appearing for the appellant has submitted that since the compromise arrived at by Fakiria in favour of Jasmer was with respect to specific khasra number, therefore, his khasra number would be deemed to have been separated from the joint khata. He has further submitted that the plaintiff also claim that he has been delivered possession of specific khasra number which is the same khasra number as was

conceded in favour of Jasmer Singh, therefore, neither the plaintiff nor Jasmer Singh remain co-sharer. Once the property is part of a joint khata and Fakiria was only a co-owner, he could not transfer better title than what he himself has. He could only transfer his undivided share irrespective of fact that whether the possession was given through Court decree or through sale deed.

In view thereof, there is no ground to interfere.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Appeal is dismissed.

**20.03.2019**

Dinesh Bansal

**( ANIL KSHETARPAL )  
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No