

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5281 of 2017 (O&M)

Date of Decision: February 21, 2019

Puran Singh through L.Rs

...Appellant

Versus

Gurcharan Singh @ Charan Singh (deceased) through L.R. & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Avtar Singh Khinda, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff has not been successful in claiming declaration by stating the mutation No.2480 entered on 20.08.2009 to be null and void and as well as injunction qua forcible interference and dispossession.

It was alleged that the mutation proceedings were procured by the defendants on the basis of the fraudulent order with malafide intention to grab the property and flout the terms of the compromise and decree dated 31.03.1992. The plaintiff filed a Civil Suit No.242 of 1985 titled as “Puran Singh Versus Bachan Singh”, which was decreed by the trial Court on 11.12.1985. Defendants filed Civil Suit No.152 of 1990 titled as “Gurcharan Singh @ Charan Singh & others Versus Harnam Kaur and others” for possession of land measuring 4K-16M out of the present suit land leaving aside khasra No.482, wherein the plaintiff was arrayed as defendant No.3. A compromise was effected on 31.03.1992 which was reduced into writing and as per the aforementioned compromise, the decree of the plaintiff in

Suit No.242 of 1985 was admitted by the present defendants and the sale deed dated 16.04.1979 by Harnam Kaur in favour of present defendants regarding 4K-16M was admitted by the plaintiff as correct. It was agreed that the plaintiff, i.e., the defendant herein and Puran Singh plaintiff herein would get the mutation of inheritance of Surain Singh and thereafter the land will be partitioned and in that partition, the defendants will take the land purchased by them vide sale deed dated 16.04.1979 and adjoining 0K-6M land, whereas the present plaintiff would take his 13K-6M land from the remaining land. The statements of the parties were recorded, but the decree of Civil Suit No.242 was kept intact. The defendants filed the execution of the said compromise decree, whereas the plaintiff filed objection regarding maintainability, but despite that, the mutation proceedings were recorded.

Defendant No.2 was proceeded ex-parte, whereas defendant No.1 contested the suit and did not deny the previous litigation. As regards the decree passed in 1985 civil suit, it was stated to be an ex-parte decree. Mutation of inheritance was entered as per the compromise dated 31.03.1992. The objections in the execution were dismissed and the warrants of possession were issued and the possession of the suit land was delivered to the defendants on 27.12.1997.

Plaintiff, in support of the pleadings, examined five witnesses and brought on record documents Ex.P1 to Ex.P25, whereas the defendants examined two witnesses and brought on record Ex.D1 to Ex.D8, i.e., jamabandies for various years.

Mr. Avtar Singh Khinda, learned counsel for the appellant-plaintiff submitted that the mutation of inheritance was sanctioned without

sending notice to the effected persons which as sanctioned after eleven years of the alleged order. The plaintiff acquired the knowledge on enquiring from the Patwari. The defendants were approached but they refused to do so. The entire evidence produced by the defendants was beyond the pleadings. The mutation was not actually sanctioned on the basis of the compromise decree, therefore, there is an abdication. Even the defendants have failed to discharge their onus.

I am afraid, the aforementioned argument is not sustainable as the Rapat Roznamcha No.164 brought on record, established the possession of the defendants having been taken way back in 1997. The mutation was also sanctioned as per the compromise decree. No illegality was pointed out or brought on record before the courts below enabling them to decree the suit by believing the contentions of the plaintiff to have been against the judgment and decree. If at all, the other party had not honoured the compromise, remedy was to move an appropriate application, but in my view, it appears to be an attempt to overcome the compromise decree by filing a separate suit, which is emphatically barred under Order 23 Rule 3A CPC.

In my view, the argument of the learned counsel is not able to bring the case within the realm of perversity to form a different opinion than the one arrived. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

February 21, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No