

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5291 of 2017 (O&M)

Date of Decision: January 29, 2019

Kamruddin

...Appellant

Versus

Umar Khan & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Arihant Jain, Advocate &
Mr. Arun Jindal, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff sought declaration to be owner in possession of agricultural land measuring 10 marlas out of 54 kanals 07 marlas to the extent of 1/28th share bearing khewat/khatoni No.133/178, Rect.No.15 Killa No.13 Min (8-0), 18/1 (4-8), khatoni Bno.179, Rect.No.15, Killa No.13 Min (1-12), khewat/ khatoni No.137/196, Rect.No.3 Killa No.24 Min (1-13), Khatoni No.197, Rect.No.3 Killa No.18n (7-17), Rect.No.15, Killa No.2 (8-0), Khatoni No.198, Rect.No.3, Killa No.24 Min (1-12), Khatoni No.199, Rect.No.3 Killa No.23 Min (1-15), Khatoni No.200, Rect.No.3, Killa No.17 Min (2-8), Khatoni No.201, Rect.No.3 Killa No.24 Min (1-12), Khatoni No.202, Rect.No.15 Killa No.9/1 (1-15), Khatoni No.203, Rect.No.3 Killa No.13/2 (4-18), Khatoni Bno.204, Rect.No.3, Killa No.23 Min (1-15), 24 Min (2-12), Khatoni No.205, Rect.No.3 Killa No.23 Min (1-15), situated within the revenue estate of Village Dadka and also land measuring 1 kanal 5 marlas out of 35

kanals 9 marlas to the extent of 1/28 shares bearing Khewat/Khatoni No.133/171, Rect.No.15, Killa No.9/2 Min (4-16), Rect.No.16, Killa No.1 Min (2-0), Khatoni No.172, Rect.No.16, Killa No.1 Min (2-0), Khatoni No.173, Rect.No.16, Killa No.10/2 Min (3-15), Khatoni No.174, Rect.No.15, Killa No.5 Min (3-16), Khatoni No.175, Rect.No.15 Killa No.5 Min (1-17), Khatoni No.176, Rect.No.15, Killa No.5 Min (2-0), 6/1 (2-5), Khatoni No.177, Rect.No.15, Killa No.15/2 (3-10), 16/1 (2-0), Khatoni No.178, Rect.No.16, Killa No.1 Min (2-0), Khatoni No.179, Rect.No.16, Killa No.10/2 Min (0-16), Khatoni No.189, Rect.No.15, Killa No.17/2 (2-10), Rect.No.16, Killa No.10/2 (2-4), situated within the revenue estate of Village Dadka, Tehsil Hodal.

It was alleged that vide sale deed dated 23.07.2003, defendant No.1 had sold land measuring 1 kanal 19 marlas having 1/28th share which was a parcel of land aforementioned. Later on, it came to the knowledge that defendant No.1, vide sale deed of 2001, sold remaining parcel of land to the extent of 1/28th share out of 40 kanals to defendant Nos.2 to 5 and, thus, was left with ownership of 10 marlas. It is in these circumstances, the short fall was to be recouped from the other parcel of land.

Mr. Arihant Jain and Mr. Arun Jindal, learned counsel appearing on behalf of the appellant-plaintiff submitted that the trial Court, by noticing the sale deed to be genuine, confined the declaration to the extent of 10 marlas in respect of 1/28th share, but ignored the plea that the plaintiff had been duped by defendant No.1 particularly when there was no mens rea on behalf of the plaintiff. The plaintiff has been duped as defendant No.1 had taken the entire price resulting into fraud.

I am afraid, the aforementioned argument is not sustainable,

for, the relief sought by the appellant-plaintiff against respondent-defendant No.1 could not have been granted as the sale deed in favour of the plaintiff pertained to 1/28th share out of 40 kanals and not 30 kanals of area, i.e., second parcel of land. It is not ascertained the ownership of the land whether he was owner of the entire land or had parted some land in the same manner. The best remedy for the appellant was to seek damages in terms of money or to take any appropriate action in accordance with law which was not incorporated in the plaint except for declaration and permanent injunction.

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

January 29, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No