

RSA No.6389 of 2017 (O&M)

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

RSA No.6389 of 2017 (O&M)

Date of decision:27.3.2019

Amar Singh and others

... Appellants

Vs.

Saraswati and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sudhanshu Makkar, Advocate
for the appellants.

AMIT RAWAL J.

C.M.No.16569-C of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 09 days in re-filing the appeal is condoned.

C.M. stands allowed.

RSA No.6389 of 2017 (O&M)

The present regular second appeal is directed against the judgment and decree of the Lower Appellate Court, whereby, the appellant -defendants have not been successful in defending the appeal preferred by the plaintiff who was not successful before the trial Court in claiming the relief of declaration as sought in the plaint.

The plaintiff sought the decree of declaration to the effect that she is entitled to obtain the land from the khewat no.18 khatoni no.67, kite 19 measuring 421 bighas 19 biswas in place of land measuring 35 bighas 15

was purchased by her, vide sale deed dated 16.10.2008 as the defendants in the sale deed did not disclose that the property was subject matter to any dispute or interim order. In fact, already suit was pending with regard to aforementioned land before the Civil Judge (Junior Division) since 29.03.2007 resulting into fraud and mis-representation, also sought the decree for possession from aforementioned khewat, in the alternative refund of consideration amount of Rs.23,26,000/-, stamp duty and registration fee with interest. The aforementioned litigation was preferred by the tenants under Sections 5 and 8 of the Punjab Tenancy Act 1887 and Sections 2A, 2F and 3 of Punjab Occupancy Tenancy (Vesting of Proprietary Rights) Act, 1952.

In pursuance to the notice, defendants contested the suit and stated that plaintiff was made aware of the occupant tenants and plaintiff undertaken to take the possession. There was no stay of the order of the Court nor any suit was pending with regard to the suit property.

The trial Court on receipt of the replication framed the following issues:-

- “1. Whether the plaintiff is entitled to the decree of declaration alongwith permanent injunction as prayed for?OPP
2. If issue no.1 is decided in favour of plaintiff, whether plaintiff is entitled to decree for possession, as prayed for?OPP
3. Whether the suit of the plaintiff is not maintainable in the present suit?OPD
4. Whether the plaintiff has no cause of action or locus

standi to file the present suit?OPD

5. Whether the Court has jurisdiction to try and decide the present suit?OPD

6. Whether the plaintiff is not properly valued for the purpose of court fee?OPD

7. Relief.”

The plaintiff in support of the pleadings brought on record umpteen number of documentary evidence spanning from Ex.P1 to Ex.P46 through the testimony of four witnesses whereas defendants examined two witnesses and brought on record Ex.D1 and Ex.D2.

The trial Court on the basis of evidence held that suit per se was not maintainable as the plaintiff was made aware that land was occupied by the tenants and had accepted to take the possession. In appeal, the Lower Appellate Court reversed the findings.

Mr. Sudhanshu Makkar, learned counsel appearing on behalf of the appellants submitted that suit for simpliciter declaration was not maintainable in the eyes of law as the ingredients of fraud had not been proved. The pendency of the litigation is notice to all. Even if it was not disclosed in the sale deed, no benefit can be derived of. The language of property being non-encumbered or no litigation is a routine language and the remedy for her was to seek ejectment petition against the tenants but not exchange of land.

I have heard the learned counsel for the appellants, appraised the judgments and decrees of the Courts below and of the view that there is

no force and merit in the submissions of Mr. Makkar, for, concededly, the aforementioned suit filed by the tenants was decreed, in essence, tenants had become the owners. The relief sought in the suit was totally in terms of the provisions of Section 26 of the Specific Relief Act, 1963 which read thus:-

26. When instrument may be rectified.—

[\(1\)](#) When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing [not being the articles of association of a company to which the Companies Act, 1956 (1 of 1956) applies] does not express their real intention, then—

[\(a\)](#) either party or his representative in interest may institute a suit to have the instrument rectified; or

[\(b\)](#) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or

[\(c\)](#) a defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.

[\(2\)](#) If, in any suit in which a contract or other instrument is sought to be rectified under sub-section (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

(3) A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced.

(4) No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed: Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim.

It empowers the person to rectify the mistake or a fraud by rectification of the sale deed. The copy of the sale deed showed to this Court did not envisage any intimation by the vendor i.e. appellant-defendants regarding pendency of the suit, though it was already pending as well as non-incumbered which was actually case of fraud as factum of decree has not been denied. In such circumstances, decree of the Lower Appellate entitling the equal share of land to the plaintiff cannot said to be suffering from illegality and perversity.

No ground is made out for interference.

Resultantly, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 27, 2019

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No