

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 963 of 2012 (O&M)

Date of Decision: 03.03.2020

Inder Pal (deceased) through his legal representatives

... Appellant(s)

Versus

Sham Rani and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Baldev Raj Mahajan, Senior Advocate
with Ms. Bahaar Ghuman, Advocate
for the appellant.

Mr. Prateek Pandit, Advocate
for the respondents.

Anil Kshetarpal, J.

Plaintiff No.3/appellant has filed the present regular second appeal against the concurrent finding of fact arrived at by both the Courts below dismissing the suit filed by the appellant along with two other plaintiffs for grant of decree for declaration to the effect that plaintiffs No.1, 2 & 3 are owners in possession of the suit land described as *Gair Mumkin Taur Chah*. Literal meaning of the aforesaid word is that it is a passage to the Well.

Bakshi Ram son of Amar Singh was owner of certain properties. He sold 6 kanals 15 marlas of land along with half "*Taur Chah*" along with other rights in favour of plaintiffs No. 1 & 2 vide sale deed dated 19.02.1979. Bakshi Ram son of Amar Singh, thereafter, sold 8 kanals 17 marlas of land along with half share in the tube-well and half share of *Taur Chah* along with malba in favour of plaintiff No.3 vide registered sale deed dated 19.03.1979.

The mutation of the land, so purchased, was sanctioned in favour of the

plaintiffs, however, with respect to *Taur Chah*, which was also purchased, no mutation was sanctioned, hence, entry in the revenue record continued in the name of Bakshi Ram, who died on 11.12.1984. His widow Lekh Wanti also died on 11.06.2001. After a period of 19 years, the land described as *Gair Mumkin Taur Chah* was mutated in favour of the legal heirs of Bakshi Ram son of Amar Singh. The plaintiffs filed the present suit for declaration as noticed above.

The defendants contested the suit and admitted that Bakshi Ram was owner of the property bearing khasra No. 53//27, but it was pleaded that it was never part of the sale deed.

Both the Courts below dismissed the suit filed by the plaintiffs on two grounds – (i) In the sale deeds, khasra number of the land comprised in *Gair Mumkin Taur Chah* has not been specified and (ii) the suit filed by the plaintiffs is barred by limitation.

This Court has heard learned counsel for the parties and with their able assistance, gone through the judgments of both the Courts below and the record.

Learned senior counsel appearing for the appellant has submitted that execution of the sale deeds by Bakshi Ram in favour of the plaintiffs dated 19.02.1979 and 19.03.1979 are proved. The correctness of the aforesaid sale deeds has not been disputed by the defendants. A translation of both the sale deeds has been produced which clearly provides that rights in half share of the *Gair Mumkin Taur Chah* have been transferred to the plaintiffs through each of the sale deeds. Learned counsel for the respondents has also read over the vernacular of the sale deeds in which this fact is specifically recorded. Learned counsel for the respondents failed to draw attention of this Court to any other

Taur Chah owned by Bakshi Ram. As noticed above, literal meaning of *Taur Chah* is a passage to the Well. In the sale deeds, executed in favour of plaintiff No.3, half share of the electric connection installed at the tube-well was also transferred. Obviously, the rights in the passage to the aforesaid tube-well were also transferred.

On the other hand, learned counsel for the respondents has submitted that Bakshi Ram son of Amar Singh died on 11.12.1984 and the plaintiffs filed the suit in the year 2004 and therefore, the suit is barred by limitation.

This Court has considered the submissions made by learned counsel for the parties.

In the considered view of this Court, both the Courts below have erred in dismissing the suit filed by the plaintiffs. The plaintiffs have filed a suit for declaration on the basis of title. Limitation for filing such suit for declaration would begin to run when the cause of action arises. The plaintiffs were not challenging the correctness of any written instruments. They were rather claiming the rights under the written instruments i.e. the two sale deeds. It is also well settled that mere wrong entry in the revenue record does not necessarily give rise to a cause of action. The revenue record is only for the purpose of calculation of land revenue and to maintain the record. Hence, non-sanction of mutation with regard to the land comprised in *Gair Mumkin Taur Chah* would not debar the plaintiffs, who are the purchasers, from claiming their rights. It is not in dispute that the land is lying vacant. Hence, the finding of both the Courts below that the suit filed by the plaintiffs is barred by limitation cannot be substantiated, hence, set aside.

With regard to second reason, it will be noticed that the plaintiffs

purchased the agricultural land from Bakshi Ram son of Amar Singh by referring to khewat, khatauni, rectangle and khasra numbers. Along with the aforesaid rights in the agricultural land, the rights of ingress and egress along with the half share of electric connection in the tube-well and half share in the *Gair Mumkin Taur Chah* were also transferred. Thus, the plaintiffs have a right in that passage. Since the two sale deeds were executed in the year 1984, the correctness whereof is not disputed by the respondents, all the rights in the *Gair Mumkin Taur Chah* were transferred to them. The existence of *Taur Chah* adjoining to the property purchased is not in dispute. Merely because *Gair Mumkin Taur Chah* has not been identified by a specific khasra number would not deprive the plaintiffs from their rights, particularly when Bakshi Ram is not proved to be owner of any other *Taur Chah*. The defendants have also admitted that there is no other *Taur Chah*.

Keeping in view the aforesaid facts, the present regular second appeal is allowed. The judgments & decrees, passed by both the Courts below, are set aside and the suit of the plaintiffs, as prayed for, shall stand decreed.

The miscellaneous application(s), if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

March 03, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No