

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

RSA-1954-2018(O&M)

Date of decision: 15.01.2020

Rewati and others

.....Appellants

Versus

Surender Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.O.P.Goyal, Sr. Advocate with
Mr. Piyush Aggarwal and
Mr. S.K.Sharma, Advocates for the appellants

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-appellants are in Regular Second Appeal against concurrent findings of fact arrived at by the Courts below while dismissing the suit filed by them for declaration to the effect that mutation no. 1002 is illegal, null, void and not binding on the rights of the plaintiffs and for direction to incorporate the names of the plaintiffs as co-owners in possession and for decree of permanent injunction restraining the defendants from interfering in their peaceful possession.

Predecessor-in-interest of the plaintiffs had sold 13 kanals 15 marlas land through a registered sale deed dated 17.10.1985 in favour of defendants no. 1 and 2. However, at the time of recording mutation, a small area of 14 marlas which was not part of the sale deed, was also mutated in favour of the defendants. Plaintiffs claim that mutation

qua 14 marlas is wrong. Defendants contested the suit and pleaded that Het Ram, predecessor-in-interest of the plaintiffs, the vendor had sold the property through a registered sale deed, however, at the time when the mutation was to be sanctioned, it came to notice that some deficiency in the area as per the description of land given in the registered sale deed. Therefore, Het Ram agreed to get the names of defendant no. 1 and 2 incorporated qua land measuring 14 marlas land in dispute so as to make up the deficiency in the land found at the spot. As per revenue record defendants are owners in possession of land measuring 13 kanals 15 marlas.

Om Parkash and other legal representative of Het Ram previously filed a suit for the same relief which was dismissed and the aforesaid judgment has become final between the parties.

Learned senior counsel submitted that the finding of the first Appellate Court in paragraph 26 to the effect that the suit filed by the plaintiffs through their power of attorney holder is not maintainable is erroneous.

On careful reading of paragraph 26 of the judgment passed by the first Appellate Court it is apparent that the Court has held that since the plaintiffs have not appeared in evidence, therefore, adverse inference is to be drawn against them. The conclusion of the first Appellate Court in paragraph 26 is to be read in that context.

However, learned senior counsel appearing for the appellants does not dispute about the correctness of the sale deed

executed by Het Ram on 17.10.1985. Hence, revenue authorities have only made good deficiency so as to give effect to the registered sale deed correctness whereof is not disputed.

Hence, no ground to interfere is made out.

Dismissed.

15.01.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No