

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 329 of 2018 (O&M)

Date of Decision: 19.03.2020

Maan Singh and Others

... Appellant(s)

Versus

Chhotu Ram and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Ravinder Malik, Advocate
for the appellants.

Anil Kshetarpal, J.

The plaintiff/appellants have filed the regular second appeal against the concurrent findings of fact arrived at by both the Courts below while dismissing the suit filed seeking decree of declaration to the effect that the plaintiffs are owners in possession of the suit property comprised in *kill*a No. 142 (3-0) situated within the revenue estate of village Dariyapur, Tehsil Bahadurgarh, District Jhajjar.

The plaintiffs, who are sons of late Raghunath Singh (died on 19.03.2008), claimed that their father had bequeathed all his properties including 1/3rd share in plot No. 142 in favour of the plaintiffs in equal share vide registered Will dated 06.06.2005. The plaintiffs claimed that they came to know that the defendants have illegally, in collusion with the revenue officials, got sanctioned mutation of exchange bearing No. 1629 dated 26.10.1981 recording that Raghunath Singh had given in exchange the suit land in lieu of having received some land in *abadi*. The plaintiffs have

claimed that the value of suit land is more than ₹ 100/- and therefore, required to be exchanged through a registered document. The plaintiffs claims that they are using the property for storing fuel wood, preparing cow-dung cakes and tethering cattle. The plaintiffs also claim that they had stored 30,000 bricks for construction of their house.

The defendants contested the suit while asserting that they are owners in possession of the suit land on the strength of the exchange of land by Raghunath Singh and they are in continuous possession of the same. On appreciation of evidence, both the Courts below dismissed the suit filed by the plaintiffs as they failed to prove their case.

Learned counsel appearing for the appellants has challenged the concurrent findings of fact arrived at by both the Courts below by submitting that the appellants in lieu of the exchange had not received any property and therefore, the alleged exchange was a sham transaction. He, hence, submitted that the plaintiffs' case is established.

This Court has considered the submissions of learned counsel for the appellants and with their able assistance, gone through the judgments passed by the Courts below.

At the outset, it may be noted here that Section 118 of the Transfer of Property Act, 1882 was not extended at the relevant time to State of Haryana. Thus, the exchange of immovable property can even be oral and not required to be only through registered documents. The learned counsel for the appellants does not dispute this fact.

Now let us examine the arguments of learned counsel for the appellants. It will be noted here that mutation of exchange was entered by

the Tehsildar on 26.10.1981. Raghunath Singh had appeared before the revenue officials and admitted the exchange. Numberdar-Chander Singh had attested the aforesaid mutation and identified Raghunath Singh. Thereafter, jamabandies from the year 1982-83 have been produced which record that it is the defendants who are recorded to be owners in possession of the land continuously. Still further, in the jamabandi for the year 2007-08, there was a wrong entry which was corrected by a *fard badar* in favour of the defendants. The plaintiffs, even at that time, never objected thereto. The plaintiffs have failed to rebut the presumption of correctness attached to the jamabandies. Further, the Will under which the plaintiffs claim ownership of the plot in question, does not even refer to the suit land. If Raghunath Singh was owner of the property at the time of his death in the year 2008, he would have bequeathed the plot in question to the plaintiffs by specifically referred to the same. In the Will what has been written is that he is bequeathing his entire property in favour of the plaintiffs. That itself would not be sufficient in the facts and circumstances of the present case. Still further, the plaintiffs are residents of the same village. In the revenue record, the defendants are recorded to be owners in possession for a period of 26 years continuously but the plaintiffs or their predecessors never objected thereto.

In these circumstances, now let us examine the arguments of learned counsel for the appellants. At the time of sanction of mutation, Raghunath Singh had acknowledged that he has, in exchange, received a plot situated in *abadi*. The plaintiffs are taking benefit of the fact that there is no revenue record of the immovable property situated in *abadi* of the village in the name of individuals. In the land falling in *abadi* of the village, the person

in possession is presumed to be owner unless proved otherwise.

Keeping in view the aforesaid facts, more particularly the fact that for 26 years, the plaintiffs or their predecessors never objected to the revenue record and Raghunath Singh had himself appeared when mutation of exchange was sanctioned in the year 1981, this Court does not find any error in the conclusion of both the Courts below.

Hence, there is no ground to interfere.

Dismissed.

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

(Anil Kshetarpal)
Judge

March 19, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No