

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

RSA-3625-2010 (O&M)

Date of decision: 21.02.2022

Om Parkash

....Appellant

Versus

State of Haryana

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Vashisht, Advocate for the appellant
 Mr. Harsh Vardhan, AAG, Haryana

ANIL KSHETARPAL, J (Oral)

While assailing the correctness of the concurrent findings of facts, arrived at by the courts below the plaintiff has filed this Regular Second Appeal.

Some peculiar facts are required to be noticed. The plaintiff claims that defendant no.1 Smt. Nandi widow of Sheo Ram had sold the land in dispute in favour of the plaintiff's father Kehari son of Indraaj on 18.06.1937 for a sale consideration of Six Rupees and Three Annas. He sought declaration that he is owner in possession of the suit land. The State of Haryana contested the suit and submitted that the alleged sale is illegal and against the law and the possession of the plaintiff over the suit land is illegal and unauthorized. Defendant no.1 had died issueless therefore, the property is escheated in favour of the State.

The plaintiff, in order to prove the sale, produced a receipt dated 18.06.1937 (according to English/Gregorian calendar). From the reading of the aforesaid writing, it is evident that 1 Bigha 3 Biswas land comprised in khasra no.726 is stated to have been sold through the

aforesaid receipt. The plaintiff seeks declaration that he is an owner in possession of the land comprised in Rect.no. 53 khasra no.22 (80).

Both the courts have dismissed the suit as the plaintiff failed to produce the link evidence to connect the land comprised in khasra no.726 with Rect. No.53 khasra no.22.

Heard the learned counsel representing the parties at length and with their able assistance perused the judgments passed by the courts below alongwith the record, which was requisitioned.

Learned counsel representing the appellant, while drawing the attention of the court to the written statement filed by the State of Haryana, contends that the assertions made in the plaint have not been specifically denied and therefore, the State has filed an evasive reply. He further submits that there is no specific denial, therefore, the assertions made in the plaint shall be deemed to have been admitted. He further contends that the mutation entry in favour of the State has not been properly made. Lastly, while referring to the admission of the witness in oral evidence, he contends that once the possession of the plaintiff is admitted for quite some time, therefore, the courts have erred in declining the relief as the plaintiff has perfected his title by way of adverse possession.

Per contra, learned State counsel, on instructions from Sh.Shamsher Singh, Naib Kanungo, Sadar, office of Jind Deputy Commissioner, contends that the aforesaid writing is with respect to a small portion of land measuring 1 Bigha 3 Biswas whereas the plaintiff claims declaration with respect to land measuring 8 kanals. He further

contends that the plaintiff has failed to produce the connecting evidence to prove that the land comprised in khasra no.726 subsequently came to be assigned to Rect.no. 53 khasra no.22 post the consolidation of holdings. He further submits that for the first time the plaintiff came to be recorded in possession in the revenue record in the year 2003. He submits that in fact the plaintiff is an encroacher.

From a careful reading of Ex.P1, it is evident that this receipt is with respect to land measuring 1 Bigha 3 Biswas comprised in khasra no.726. First and foremost, this document has never been proved in accordance with law. Secondly, there is no evidence to connect the suit land with the land described in the receipt. Thirdly, there is no evidence as to how the land measuring 1 Bigha 3 Biswas became 8 kanals. Moreover, it is evident that the State of Haryana while filing the written statement has specifically denied the assertions made by the plaintiff in each and every paragraph. In such circumstances, it would not be appropriate to hold that the written statement filed by the State of Haryana is evasive or it could be treated as an admission. The plaintiff is required to stand on his own legs. In the present case, the plaintiff has failed to prove his case. It is also not in dispute that previously the entry of possession continued in favour of late Smt. Nandi. In the revenue record, for the first time the plaintiff came in possession in the year 2003. It is the case of the plaintiff that his father purchased the property in the year 1937 and possession was delivered. However, there is no evidence that the plaintiff's father ever remained in possession.

As regards argument of the learned counsel assailing the

correctness of the mutation entry while escheating the property in favour of the State, it may be noted that the plaintiff does not claim to be legal heir of late Smt. Nandi, therefore, his argument is not of much relevance.

Hence, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

21.02.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE