

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.874 of 2023 (O&M)

Date of Order:28.11.2023

Sunil and others

.Appellants

Versus

Rajesh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Dalip Kumar Tuteja, Advocate, for the appellants.

ANIL KSHETARPAL, J

1. This regular second appeal has been filed to challenge the correctness of the judgment and decree passed by the First Appellate Court.

2. Though, the trial court dismissed the plaintiffs' suit for grant of decree of declaration with a consequential relief of possession, however, the First Appellate Court has reversed the judgment and decree passed by the trial court

3. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

4. Late Sh. Mangli, the predecessor-in-interest of the defendants was a big landowner. In the year 1959, his land was declared surplus including the land which was subsequently exchanged by him with the predecessor-in-interest of the plaintiff in the year 1968. Late Sh. Mangli in exchange of the suit land gave land that was already declared surplus to the predecessor-in-interest of the plaintiffs. Subsequently, the government

allotted the surplus land in favour of the landless persons. Thus, the plaintiffs were dispossessed from the land that they received in exchange from late Sh. Mangli. This prompted the plaintiffs to file this suit.

5. As already noticed, the trial court dismissed the suit, however, the First Appellate Court has reversed the judgment and decree passed by the trial court.

6. This Bench has heard the learned counsel representing the appellants at length and with his able assistance perused the paper book.

7. The learned counsel representing the appellants submits that in the year 1977, an application was filed before the revenue authorities for the change of permissible area of late Sh. Mangli. He submits that in this application, the predecessor-in-interest of the plaintiffs never alleged that a fraud has been played by late Sh. Mangli. He further contends that Sh. Daya Nand, one of the plaintiff, is still alive, however, he has not stepped into the witness box. In the end, he contends that the plaintiffs' suit is time barred.

8. This court has considered the submissions of the learned counsel representing the appellants.

9. In fact, Section 119 of the Transfer of Property Act, 1882 provides that where a party to an agreement to exchange or property loses possession of the property received in exchange due to a defect in the title of the other party the former would be entitled to retain possession of the property he gave in exchange. He can also apply for return of the land which he gave in exchange.

10. In this case, the learned counsel representing the appellants does not dispute that the land given in exchange by late Sh. Mangli to the predecessor of the plaintiffs was already declared surplus, however, he

submits that late Sh. Mangli was recorded as an owner in the revenue record. However, this will not change the position particularly when after 1959, late Sh. Mangli was no longer owner of the property because it was declared surplus.

11. As far as application (Annexure A-6), it may be noted that the plaintiffs made an attempt to save the land which had come in their possession. They requested the revenue authorities to include the land which has been given to them by late Sh. Mangli in exchange in his permissible area. Once they failed in the remedies exercised, they filed the suit. Hence, the application (Annexure A-6) would not operate as estoppel against the appellants.

12. With respect to the second argument, it may be noted that the overwhelming evidence has been produced by the plaintiffs to prove their case. Hence, it would not be appropriate for this court to draw adverse inference in the regular second appeal because Sh. Daya Nand did not step into the witness box.

13. The last argument of the learned counsel representing the appellants also does not have substance because the plaintiffs have filed a suit for grant of decree of declaration that they are owners of the property and hence, they are entitled to the same. The relief of possession has been sought. The defendants do not claim that they have perfected their title by way of adverse possession.

14. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

15. Dismissed, accordingly.

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

November 28, 2023

(ANIL KSHETARPAL)

nt

JUDGE

Whether speaking/reasoned

:YES/NO

Whether reportable

:YES/NO